

CRUCIAL EXPOSE

THE SIMI

FICTIONS



3 MONTH, 11 CITY
TEHELKA INVESTIGATION
REVEALS ALARMING FINDINGS

AJIT SAHI

Tehelka

The Thin Red Line

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Editor-in-Chief

I WAS AMONG several who saw him die. His name was Surjit Singh Penta, and the year was 1988. A smartly calibrated siege of the Golden Temple had just ended in the surrender of all the militants holed up inside the Harmandir Sahib, the Temple's sanctum sanctorum. As they filed out and squatted in the courtyard of the serai on the Temple's periphery, a sudden commotion broke out. The police spotters had recognised a major militant. But before they could lay hands on him, he had swallowed his cyanide pill, and though the police threw him into a jeep to rush him to hospital, he was dead. Penta's story deserves telling because it illustrates the pathology of oppression. The young Sikh was a national-level athlete representing Delhi before he became a witness to the brutal Sikh massacres of 1984. By the time he committed suicide a few years later more than 40 killings were attributed to him.

Before he became a terrorist Penta had been terrorised by the state — or its malign absence. That is often the sequence: the state's excesses, followed by those of the individual. The line between law enforcement and high-handedness is always very thin. In India, dangerously, it is being smudged every day. Are Naxalites victims before they become perpetrators? Are young militants in the north-east and Kashmir brutalised before they become brutal? Is the ordinary citizen meted out insensitivity before he becomes desensitised? What does one say about a country where one turns to the police with trepidation, where no one expects the men in khaki to do the right thing?

While extreme viewpoints have a right to exist in a free society, it goes without saying that no one ought to have any sympathy for the positions of bigoted groups and individuals. The kind who base their existence on perilous ideas of divine rights, exclusion of unbelievers, intolerance, violence, and a preferred way of life to which everyone else must conform. If SIMI is one such organisation, it deserves our criticism and scorn. If it is breaking the law and fomenting hatred, it deserves to be rigorously investigated and brought to justice. But what if it is a target of widespread and growing prejudice? What if the drive against it is misdirected and designed to seed more terror than it aims to suppress? And while steel may cut steel, as the old Hindi saw goes, can prejudice ever neutralise prejudice?

For the seven years since SIMI has been outlawed, state agencies have been insisting that the outfit is an anti-national organisation engaged in conspiracies to destabilise the government through acts of terror; and that it brazenly preaches sedition, being closely linked with Pakistanbased terrorist groups like the Lashkar-e-Tyaba, Hizb-ul- Mujahideen, and the Jaish-e-Mohammed. Alleged SIMI activists stand accused of some of the worst terrorist crimes on Indian soil, including bomb blasts that killed 187 people in Mumbai's local trains two years ago.

BUT A three-month long investigation by TEHELKA — carried out all over the country — reveals that a large majority of these cases are redolent of a chilling and systematic witch-hunt against innocent Muslims. Sadly, the expose shows it is not just the policing and intelligence agencies that are to blame — even the judicial process is often complicit in the terrible miscarriage of justice. Ajit Sahi's painstaking and remarkable reportage reveals a shocking web of dubious cases being pursued against so-called operatives of SIMI — cases which lack evidence, cases which flagrantly ignore standard procedures of criminal investigation and trial, cases that callously destroy the lives of young men and their families.

The Indian state must tread carefully. The individual tragedies point to a wider psychosis. For the last many years — abetted by global trends — the state's actions and utterances seem to be deepening a prejudice against Muslims. Catching the mood, Bollywood's arch villains are now mostly Islamic. India has 160 million Muslims - more than Pakistan, more than any other country save Indonesia. Even if 10,000 are radicalised it's barely a tree in a forest. To create an atmosphere that blights the entire forest is a mistake. To foster a psychology of siege in an entire community is a disaster. Before it seeks further bans, the state ought to vigorously introspect. William Faulkner wrote that "prejudice is shown to be the most destructive when it is internalised". TEHELKA's detailed investigation suggests, alarmingly, that in the shining struggling India of today there is a real danger of that. •

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

The Kafka Project

*In a crucial investigation over three months, Editor-at-Large **AJIT SAHI** tracked the SIMI fictions across 11 cities —Trivandrum, Bangalore, Hyderabad, Chennai, Udaipur, Bhopal, Mumbai, Delhi, Aurangabad, Ahmedabad and Gorakhpur. His findings are alarming and distressing. They demand urgent introspection and corrective action*

“Naturally the common people don't want war... That is understood. But after all, it is the leaders of the country who determine policy, and it is always a simple matter to drag the people along, whether it is a democracy, or a fascist dictatorship, or a parliament, or a communist dictatorship. Voice or no voice, the people can always be brought to the bidding of the leaders. That is easy. All you have to do is to tell them they are being attacked, and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same in any country.”
HERMANN WILHELM GOERING, *Nazi Party leader*

ON THE morning of September 27, 2001, Shahid Badr Falahi, a doctor of the alternative medicine system of Unani and the president of the Students' Islamic Movement of India (SIMI), sat with a few colleagues in the SIMI office in a Muslim neighbourhood of South Delhi, wondering what's next. Fatigued from two weeks of public meetings across Uttar Pradesh from where he had returned only the previous night, Falahi had just finished speaking with SIMI's office-bearers across India. Using the local STD booth as his office phone had been dead for hours, call after call fetched an echo: anxious SIMI activists in Mumbai, Lucknow, Indore, Kolkata, Chennai, Kozhikode, Patna and other cities said the police had sealed their offices the previous night without explanation. At 4 pm, Falahi got to know why. The television news announced that the Union Home Ministry had invoked a 1967 law against "unlawful activities" and banned SIMI for two years with immediate effect.

"The nature of this organisation had become apparent and preliminary information sent by various state governments only confirmed its tendencies," LK Advani, then Union Home Minister, told reporters that evening. The notification his ministry issued that day banning SIMI qualified Advani's assertion. "SIMI has been indulging in activities which are prejudicial to the security of the country and have the potential of disturbing peace and communal harmony and disrupting the secular fabric of the country," the terse, six-paragraph notification said, strongly suggesting that the government had a watertight case against SIMI with unchallengeable proof.

Other grave charges levelled said SIMI:

- Was in "close touch" with militant outfits and supported "extremism / militancy in Punjab, Jammu and Kashmir and elsewhere"
- Supported claims for seceding parts of India's territory and groups fighting for it, and thus questioned India's territorial integrity
- Was working to establish an "international Islamic order"
- Published objectionable posters and literature "calculated to incite" communal feelings and question India's territorial integrity

Most damning was the government's claim that SIMI was "involved in engineering communal riots" across India. The notification said SIMI's anti-national and militant "postures" were "clearly manifest" at its various conferences. "The speeches of the leaders [at the conferences]... glorified Pan Islamic Fundamentalism," the notification read, claiming to expose SIMI's nefarious designs. "[The leaders] used derogatory language for the deities of other religions and exhorted Muslims for Jihad."

Falahi and SIMI knew they had this coming. In fact, for more than a month, and especially since the September 11, 2001 terror

attacks in the United States, Advani had stepped up a war of words against SIMI, and Falahi had aggressively duelled with the Home Minister. A month earlier, on August 20, Falahi had issued an angry press release — those were the days when the media provided space to SIMI's views. Warning that Muslims wouldn't "tolerate injustice and atrocities" anymore and would "fight a decisive battle for their rights," Falahi said: "The increasing Islamic awakening has disturbed the Sangh Parivar as it considers SIMI the biggest obstacle in building the Ram temple at Ayodhya and making India a Hindu rashtra."

Taking on the Home Minister, Falahi said Advani and the RSS were responsible for the demolition of the Babri Masjid at Ayodhya in 1992, and reminded Advani that his cross-country Rath Yatra in 1990 had triggered riots across India. "The government hasn't been able to make

out a case against SIMI and, therefore, false grounds are being prepared,” Falahi further said. He added: “Till date, not a single allegation against SIMI has been proved while the planned attacks of the Sangh Parivar against Christians, Dalits and Muslims have been exposed by various inquiry commissions.” Falahi’s reckless challenge to India’s Home Minister was not atypical. But that was perhaps the last media space Falahi got to exercise his Right to Speech.

On September 27, after the ban was announced, Falahi and three others stayed at the office awaiting the inevitable arrival of the police. Sure enough, a dozen policemen stormed the building shortly after midnight and arrested them. “They broke the door before we could open it,” Falahi told TEHELKA from his village in Azamgarh district of Uttar Pradesh where he lives and practices medicine. “They kicked us and abused us all the way to the police station.” The government said no fewer than 240 SIMI members, including Falahi, had been arrested in a nationwide crackdown.

THE NEXT day, the Union Home Secretary called a press conference and grandly claimed that SIMI had links with Osama bin Laden/Al Qaeda, and that Palestine’s guerrilla militia, Hamas, was its close ideological partner. “Anti-national” video and audio cassettes and other “propaganda material” were reportedly seized. SIMI activists had been allegedly found distributing pro-Taliban leaflets in Delhi and other cities. No details were given, then or later. In seven years, recovery of such material has become the standard in criminal cases against SIMI, without explaining how their content — like videos of Osama bin Laden and the US terror attacks, which are easily available on the Internet — links SIMI with terrorism.

Indeed, just a day into the ban, the government had launched the tactic of making unsubstantiated, vague and generic allegations against SIMI — a tactic that the police and the intelligence agencies have perfected against SIMI since 2001. In quite the manner prescribed by Nazi propaganda minister Joseph Goebbels, the government also took to repeating mere allegations so often that they began to be accepted as the truth without needing to pass the litmus test of evidence and proof. Typically, top ministers and police level allegations against SIMI, especially when there is a terrorist attack, and the news media play them up incessantly. Yet, no proof or evidence is ever offered from a public forum. What is offered as evidence in the judicial forum is a mockery of the principles of criminal investigation.

On that day, many such allegations against SIMI tumbled out. The Home Secretary said SIMI had printed “provocative” posters and issued press releases that “caused communal tensions”. No details were given of the communal tensions or the provocation in the posters. He said SIMI distributed posters and pamphlets across the country — again, no mention of what they contained and how that broke the law.

Even legitimate acts were dubbed unlawful and seditious. In March 2001, SIMI had called public protests across India against the burning of a copy of the Quran in Delhi. This was now cited as an unlawful act to justify the ban. “SIMI’s units gave wide publicity to the [Quran burning] issue through the Internet,” the Home Secretary said. Believe it or not, police across India have over the years repeatedly told courts that the use of the Internet by SIMI’s activists proved their anti-national and unlawful goals. (Some allegations are so absurd it is incredible that they launched criminal cases. They include: “the accused trained SIMI members in swimming and horse-riding” and “the accused stood at the door of his house and shouted anti- India slogans”. Maharashtra police says the SIMI accused want that state to secede from India.)

When the first two-year ban lapsed, LK Advani, who was by then Deputy Prime Minister, slapped another two-year ban on SIMI without a day’s break on September 27, 2003. A fresh notification — virtually identical to the first — was issued, replete with the same grave charges but once again offering no evidence. Midway through the ban, the NDA lost the 2004 Lok Sabha elections and the UPA came into power. The new Home Minister, Shivraj Patil, allowed the ban to lapse in September 2005. But inexplicably, four months later, on February 7, 2006, his ministry suddenly

banned SIMI a third time. When that ran out, SIMI was banned a fourth time without a day's break on February 7 this year. Once again, the notification was identical to that of 2006.

During the course of the four bans, hundreds of criminal cases were slapped on alleged SIMI activists across the country. Hundreds of Muslim men were arrested. A few were lucky to quickly get bail. A majority has spent a year, sometimes two, in jail on the flimsiest of evidence. Those who secured bail after repeated efforts often succeeded only because the police failed to file chargesheets within the legal deadline of 90 days from arrest (the deadline is 60 days in minor cases). Hundreds out on bail are still embroiled in cases dragging on for years; in many, trials haven't even begun. Scores are still in jail, charged with crimes ranging from the absurd to the heinous. New cases are launched every now and then, and fresh arrests land more and more Muslims in jail. Many accused are repeatedly implicated in cases over the years, even as earlier cases are thrown out by the courts.

WHAT IS most amazing is that till date, police across India have failed to establish a single charge of sedition and terrorism against SIMI. In not one court have the police offered evidence or proof of links between SIMI and Pakistani and Bangladeshi terrorist organisations. Never has any link been established between SIMI and Osama bin Laden/Al Qaeda or Hamas or even with the armed separatism of Jammu and Kashmir or of Punjab, where such insurrection supposedly ended around 1991 — a decade before the government made the allegation against SIMI. No cases have ever been proved against SIMI on "engineering communal riots", a categorical assertion in the first notification repeated with successive notifications. As for "seditious literature", SIMI had published many magazines, posters, pamphlets over the nearly quarter century (1977-2001), when it had existed legitimately. No case was brought for two decades, until 1998, against any of its publications.

Before any trial, the judge examines the case for the prosecution and determines whether the material against the accused merits a

trial, and if there isn't, the accused is discharged. In many SIMI cases, this is exactly what happened: the judges found the charges so bogus they could not even sustain the framing of charges. In fact, many cases cited against SIMI are so sloppily crafted that the accused aren't even accused of being SIMI members. In a majority of the few cases that have been decided, judges across India have either summarily dismissed the charges and discharged the accused, or acquitted them after the trial. The reason lies in the quality of evidence on offer. One would expect that with police claims of a watertight case against an outlawed "terror group", the police would tender clinching documentary and/or circumstantial evidence. Surely, the sealed SIMI offices across the country offered a veritable telltale treasure to establish its links with terror networks. Surely, the police would find a paper trail such as bank accounts, handwritten letters, secret plans detailing contacts, false passports — the usual incriminating documents. Surely, the police would offer recordings of phone conversations and testimonies of neighbourhood witnesses.

It is astounding, however, that not once in their evidence do the police rely upon the contents found in the sealed SIMI offices. It is the ex-SIMI activists that have regularly asked the government and the police to give them a list of items seized from their offices, but without success. In hundreds of cases police have found no neighbours as witnesses, no bank documents, nothing. In case after case, the pattern is similar: The police receive "secret information" from an unnamed informer about a meeting or a suspicious character at a certain location. They reach the spot, search the premises, find "unlawful material" such as pamphlets and CDs on the person or persons present there, and arrest him/them.

No, they failed to record in their station diary (the all-important noting register that is the first record of every police action) the fact of having received the secret information. No, there wasn't any time to get the mandatory search warrant from a magistrate before the raid. No, they didn't

record in the station diary before leaving their station why there wasn't time to obtain the search warrant, or the grounds of their information or the article or thing they were going to search for. No, they didn't make any attempt to get respectable local inhabitants to witness the search as the law demands. No, they didn't record in their documentation that they tried to get local witnesses but couldn't. Yes, they brought along their "own" witnesses to attest to the arrests and the seizures. (Often the same witnesses have attested searches, repeatedly, sometimes on successive days and on others, weeks later.) In many cases, the seal used to secure the seized material was not handed to a third person as prudence would require but was simply carried back to the police station by the investigating officer, which straightaway raises the possibility of tampering with the alleged seized articles. There are a few cases in which bomb-making material such as RDX and gelatine sticks, and chemicals like ammonium nitrate — such as in the July 2006 Mumbai train blasts case was allegedly seized. If searches had been conducted as required by law, they would have left a paper trail of supporting evidence. But because the searches were conducted in violation of the law, the only evidence of such a search having been conducted is the word of the police officer.

Once the arrested person is in police custody, he is miraculously struck by remorse a few days later and volunteers "confessions". The section on confessions is clear-cut in the Indian Evidence Act the British wrote 136 years ago. It says: "No confession made to a police officer shall be proved as against a person accused of any offence." As recent as 2005, the Supreme Court, while deciding on appeals in the Parliament terrorist attack case of 2001, spoke of serious doubts about conceding the power of recording confessions to police officers. In any case, a confession cannot be forced but has to be made voluntarily. That the confessions by the SIMI accused are fabricated is evident from the fact that in several cases, the police claims that numerous accused are struck by remorse all at the same time and confess to their crimes on the same day and, most surprisingly, in near identical words. To be sure, the minute the accused are brought before a magistrate, they deny having made confessions or say that the police tortured them to sign on the dotted line.

SO THAT'S the comprehensive bank of evidence backing the governments' claims about SIMI's involvement in the most monstrous terrorist crimes: confessions and "unlawful material" seized in the most dubious and illegal manner.

Though the Centre has already appealed against it, SIMI leaders were ecstatic that a tribunal headed by the Delhi High Court judge, Geeta Mittal, rejected the Centre's ban on the organisation on August 5, 2008. This is the culmination of a long, dry journey for them, who have contested three previous bans and lost every time. As required by the 1967 law under which SIMI was banned, the first tribunal was constituted to hear both sides and decide if there was sufficient ground to ban SIMI. SIMI's leaders were convinced that the tribunal would see through the weakness of the case and blast the ban out the window. But the first tribunal upheld the Centre's ban, as did the second and the third.

The reasoning offered by the tribunals in upholding the bans defies both law and common sense. Stunningly, the first tribunal said that while it was true that confessions cannot be accepted as evidence against the accused in their criminal trial, the tribunal could accept such confessions since it wasn't a criminal trial. The succeeding tribunals stuck to this convoluted reasoning. No less astounding was the remark by the second tribunal that the fact that SIMI could mobilise funds to pay its legal fees itself proved that it existed and hadn't disbanded as its leaders claimed. Tribunal after tribunal said that the fact that so many fresh cases had been registered against SIMI activists was proof that the group's activities hadn't ceased.

The most shocking of all has been the tribunals' acceptance of "secret material" brought by the Centre, read alone by the presiding judge, and returned to the government, with no one else knowing what it contained. The 1967 law allows the government to claim privilege if divulging such information would imperil public interest. But it also says that the Centre must share the

secret material with the party contesting the ban, in this case, SIMI. In a 1995 judgement, however, Supreme Court Chief Justice JS Verma said the government need share it only with the presiding judge and not with the contesting party. So in essence, while a judge rules that the secret information from the Centre is good enough to uphold a ban, the banned organisation cannot know what that secret information is and, therefore, is severely compromised in its right to defend itself against the charges.

Not one to give up on his faith in the Indian judiciary, Shahid Badr Falahi has challenged the findings of each of the first three tribunals in the Supreme Court. When SIMI's counsel appeared before the Supreme Court judge at the time of admitting the appeal against the third tribunal's report, the judge said: "Same activity, same result." The lawyer for SIMI pointed out that the government itself said that during 2003-06 there had been no fresh activity from SIMI, the honourable judge shot back: "Is this a joke? Every time we confirm a ban you come back?" The counsel gently said the judge was wrongly informed, that every appeal was still pending at the Supreme Court and hadn't yet been heard. Realising his mistake, the judge said the matter should be heard by a larger bench. In the six years since the first tribunal returned a finding, the apex court hasn't yet found time to take up Falahi's appeals.

On the other hand, in stark contrast, the elation of tribunal judge Geeta Mittal's order has already abated. Though the Supreme Court has still not heard Falahi's earlier appeals against the previous three tribunals' orders upholding the bans, it has already reacted to the Centre's appeal and stayed Judge Mittal's order. "We will not give up," Falahi says with conviction. "Justice must finally be ours as truth is with us."

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

Inside The Whale: State Vs Shahid Badr Falahi

In case after case, the ex-president of SIMI has been the target of the law agencies' absurd yet sinister charges, Reports **AJIT SAHI**

'In a time of universal deceit, telling the truth becomes a revolutionary act' **GEORGE ORWELL**



DR. SHAHID BADR FALAHI

Home: Azamgarh, UP Date of arrest: September 27, 2001

Charges: Speeches inciting communal disharmony

Evidence: Video taken by police of a speech, CD with photo of a gun and some cassettes

AS WE entered the jail, the boys asked me: when will we be freed?" recalls SIMI's ex-president, Shahid Badr Falahi, after he and three others were arrested on September 27, 2001. The government portrayed Falahi as the mastermind of a sinister jihadist group working with Pakistan to destabilise India. But the criminal cases against him did not match his stature in the government propaganda.

Eleven days before his arrest, Falahi had addressed a daytime meeting of Muslims in the Bahraich town of Uttar Pradesh, some 500 km east of Delhi. Police permission had been obtained to hold the meeting at a girls' college, a stone's throw from the local police station. The police had video recorded the event. After three days, an FIR was registered against Falahi saying his speech spread hatred, contempt and disaffection against the government and incited communal disharmony. "Be a good citizen. Make your parents proud of you," Falahi says he had told the Muslim youth there. He had also held US policies responsible for "bringing on" that week's terror attacks there.

Of Falahi's speech given before hundreds, only policemen were cited as witnesses. The judge asked the police: why did you take three days to book him? Why did no communal violence occur then or since if that's what he incited? Yet, Falahi and 11 others spent time in jail. This was a "fast-track court" but the case dragged on for five years, whereupon it was — you've got to believe this — withdrawn by the government. The reason given: "inherent lacuna and insufficient evidence". The government lawyer admitted that senior district and police officers had attended the gathering. In the court, there was high drama as local Hindutva lawyers moved the judge against withdrawing the case. The judge questioned their locus but agreed to review Falahi's speech. The police video was played in a packed courtroom. The judge realised the FIR didn't truly reflect the speech. He said it was disturbing that in his speech, Falahi suggested that the Muslim be allowed to bear a sword as the Sikh bears his dagger and the Hindu sadhu his trident. "But mere suggestion is no crime," the judge said and allowed the government to withdraw the case in September 2006.

Falahi's woes have been many. Upon his arrest in Delhi in September 2001, police had slapped three cases against him. In one of these, he was accused of carrying "in his right hand" a calendar that "wrongly portrayed" the history of Kashmir in that it claimed Muslims had been persecuted during the rule of the Hindu kings. Once again, Falahi was accused of treason, spreading contempt, hatred and disaffection, etc., etc. He was denied bail, including from the high court. In the trial court, an exasperated judge asked the government lawyer to go study Kashmir's history and summarise it a week later in his court. Needless to add, the government lawyer failed the history test. The two "independent" witnesses of the calendar's recovery from Falahi told the judge that the police were forcing them to falsely testify against Falahi. As the other witnesses were policemen, the judge threw out the calendar case in 2003 and acquitted Falahi.

The third case against Falahi belongs to the night he was arrested from his Delhi office a few hours after SIMI was outlawed on September 27, 2001. The police said that, past midnight, Falahi gave a speech (again: contempt, hatred, disaffection) to a group of Muslims and shouted "Hindustan murdabad". The police said they tried to reason with him but he wouldn't listen. A week later, on October 4, the police allegedly seized evidence from Falahi's office: a CD with the photo of a gun, and some cassettes. The judge asked the police: why didn't you seize the material the night you arrested him? The police said: we forgot. Still, this case lasted 14 months

after which the judge dropped the charges of “promoting enmity on religious lines”. He said Falahi would be prosecuted only for being a member of an unlawful organisation, and sent the case back to the Metropolitan Magistrate. For the last nearly four years, that case hasn’t moved an inch. For the nth time, Falahi will have traveled to Delhi from his native Azamgarh on August 8, 2008 to appear in this case, and, inevitably, be given another date.

In yet another absurd case, Falahi was allegedly caught pasting a sticker on a wall of Jamia Milia Islamia University in Delhi. The sticker had a picture of the Babri Masjid and a slogan in Hindi: “God willing, we’ll pray there one day.” The judge asked the prosecution: isn’t it a bit farfetched that the head of a national organisation would go around pasting stickers on roadside walls? He also asked: what exactly is the offence here? A public witness said he was forced by the police to falsely testify against Falahi. The judge acquitted Falahi. If these were absurd, then a case in Azamgarh is alarmingly sinister. In 2000, Falahi held a press conference in that city to slam BJP leader Kalraj Mishra for demanding a ban on SIMI. The police said this created communal disharmony and booked a case against Falahi. Falahi was in jail on this, too. For four years, the police didn’t file a chargesheet. Falahi was denied bail by the local courts and had to move the Allahabad High Court to get it.

ANOTHER PENDING case goes back to 1999. As editor of a SIMI publication, Islamic Movement, Falahi published a verbatim translation in Hindi of a feature published in an English language newspaper, The Asian Age, that contained uncharitable remarks against Lord Krishna. Of course, there isn’t any case against The Asian Age on this.

In all, Falahi spent 30 months in jail related to these bizarre cases. Ecstatic at the tribunal’s decision to reject the ban, Falahi isn’t much troubled that the Supreme Court has stayed the tribunal’s order, and is confident that SIMI will soon be a legitimate group again. Yet, he knows that the criminal cases against SIMI activists may continue for long. “As we entered the jail, I told my boys not to worry as everything happens by the mercy of Allah,” Falahi says. “He will decide when the cases end. He will decide when our test will end.”

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

The Good Doctor's Complications

*Absolved by several courts, a former SIMI office-bearer continues to face the stigma that bars him from home and job, Reports **AJIT SAHI***

AS A Muslim doctor, it is my duty to serve the poor," says Mohammad Hasan, 34, a government doctor in Rajasthan. When SIMI was banned in 2001, Hasan was serving at an anti-malaria medical camp in a Jaisalmer village. Hasan first heard of the ban on September 29, two days after it was promulgated, from newspapers reaching his camp. A week later, on October 6, the police arrested him and charged him for being a member of an unlawful organisation. Hasan was given bail the same day.

The police claimed that on September 29, Hasan distributed seditious literature, including pamphlets in Rajasthan's Pali district. But Hasan had a watertight alibi: the attendance register at the Jaisalmer anti-malaria camp. "The police obviously thought I would be at Pali where I was then posted," Hasan laughs. "They probably hadn't heard that I was on deputation at the medical camp in Jaisalmer."

Should have been an open-and-shut case, right? Wrong. After the case against him was registered, the state government suspended Hasan from his job. He moved the Rajasthan High Court. A single bench ruled in his favour. The government refused to reinstate him. Hasan appealed before a two-judge bench. This, too, ruled in his favour. The government appealed before the Supreme Court. In July 2003, nearly two years after his suspension, the Supreme Court ordered Hasan's reinstatement — with back wages, increments and allowances. Ten days later, he was back in his job.

Hasan devoted himself to further studies alongside his job. Last year, he earned an MD in Radio Diagnosis. He is currently serving as Medical Officer at the district hospital in Dholpur city. In 2005, Hasan cleared the prestigious Rajasthan Public Services Commission exam to be elevated as a doctor in the state cadre. But the Health Department rejected his appointment as the routine police verification showed he had been a SIMI member. Hasan has moved the High Court again. On another petition, the High Court has stayed his criminal trial in the original case.

The stigma of SIMI is a social handicap for Hasan, a shadow that never leaves his side. "No one rents me their houses," says Hasan. He changed houses thrice in Bikaner. At Dholpur, he has been living at the hospital guesthouse since last year. His wife and two small children live with her parents at Jaipur. Wherever he goes, Hasan is followed by state intelligence personnel.

Of course, Hasan was once a member of SIMI. In fact, at the time of the ban, he was SIMI's national general secretary. But until the ban, no case was ever filed against him.

"I am no criminal or terrorist," Hasan says. "I am a Muslim and a doctor and I'll always serve my people."

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

**They just want Muslim boys to
always be in jail'**

*Moutasim Billah has been a police scapegoat for seven years, even though they acknowledge they have nothing on him, Reports **AJIT SAHI***

**MOUTASIM BILLAH****Home:** Hyderabad, AP**Date of arrest:** March 5, 2008**Charges:** Terrorist conspiracy to incite violence**Evidence:** 'Confessions' of those arrested with Billah. CDs police claim to have seized at the meeting**Photo:** Global News Network

AN ENGINEERING student forced to give up studies because of cases of sedition and terrorism against him, 22-year-old Moutasim Billah of Hyderabad would do a lawyer proud with the way he reels out sections of the Indian Penal Code. Sadly, Billah is familiar with these sections only because he has suffered them for seven years. Billah was arrested on March 5, 2008, after his name came up in alleged confessions of other young Muslims randomly arrested and tortured with electric shocks by the police during investigations of last year's bomb blasts in Hyderabad. Nine people were killed in the May 2007 blast outside a mosque called Mecca Masjid near the Charminar. Forty more were killed in two simultaneous blasts at a snack shop and in a park in August.

When the police found no grounds to implicate Billah in the two blasts, they slapped a patently bogus case on him, saying he and the other men secretly met at a cemetery to hatch a terrorist conspiracy and incite Hindu-Muslim violence. The police claim to have raided the meeting and arrested seven persons, but say Billah absconded — until his arrest in March. He was in prison for 90 days until the High Court gave him bail. The only evidence cited against him were some "inflammatory" CDs allegedly found in the cemetery.

"The police want Muslims boys to always stay in jail on some pretext or the other," Billah told TEHELKA in an interview on June 12, 2008 at his home in Hyderabad, just hours after he was released. Billah's narrative is a good primer on how the Indian police trap innocent people and makes their lives a living hell. His story began when as a 15-year-old, Billah joined demonstrations in Hyderabad called by local Muslims in 2001 to protest US President George Bush's decision to invade Afghanistan. For some reason, police decided this was a crime in India. They registered cases against scores of protestors, including Billah. Despite there being no independent witnesses or evidence, the case has dragged on for seven years, during which Billah has attended more than 50 hearings. In 2002, he joined another protest, bringing on another FIR that is still a live grenade.

In 2004, a tragic event occurred. Billah was its victim, but the police made him an accused and slapped serious charges on him. Readers will recall that last week TEHELKA exposed the police lies against Maulana Nasiruddin of Hyderabad and two of his sons, all of whom are in jails in different states. Billah's family and Maulana Nasiruddin are neighbours in the Muslim neighbourhood of Saidabad in Hyderabad. To recap: in October 2004, Nasiruddin went to the local police station for a routine attendance in an earlier case when policemen from Gujarat waiting there arrested him on a charge of conspiracy to enact terror in that state, including the murder of its former home minister, Haren Pandya.

When a few Muslims who had accompanied Nasiruddin to the police station protested, a Gujarat police officer fired at them, instantly killing one protestor. That protestor was Billah's older and only brother. Forget about getting justice for his brother's death, Billah was made an accused in the criminal case filed against the protestors, charging them with the very serious crime of obstructing police officers from doing their duty: in this case, taking custody of Nasiruddin. The protestors forced the police to file a case against the Gujarat officer. Billah is listed as an eyewitness in that case.

TEHELKA's investigation reveals that across India, police repeatedly and deliberately list some accused as "absconding", so that they can be easily picked up when the heat is on the police for some case. That's what was said about Billah in myriad cases since 2001. But Billah was no absconder. Until 2004, he was studying BE in civil engineering at the local Deccan Engineering College, when he dropped out in the third year. He regularly participated in community events. He regularly used a mobile phone, the recordings of which could easily prove his whereabouts.

ANOTHER TACTIC the police regularly use against SIMI activists is to implicate them in older cases with retrospective effect. The day after Maulana Nasiruddin's arrest in 2004, angry Muslims had pelted stones at the police as Billah's brother's coffin had wound its way to the cemetery. The police had promptly registered another case. Billah wasn't an accused in that case for over three years. But after his arrest on March 5, 2008, police included his name in that case as well.

When he was produced in court, Billah told the judge that he had made no confessions to the police and was forced to sign a blank paper by them. But his prospects look grim: his "confession" submitted by the police says he was networked with the alleged SIMI leader, Safdar Nagori, who was dramatically arrested in Indore on March 26, 2008 and is the police's latest fall guy, vilified in the media as a big terror mastermind though his trial is yet to even begin.

Curiously, none of the police cases against Billah ever claimed he is a SIMI member, saying only that he was the brother of a SIMI member (which too both the family and SIMI deny), or that he was a "sympathiser" of SIMI or "associated" with SIMI members. But one of Hyderabad's senior IPS officers, Amit Garg, categorically asserted before the tribunal (assessing the ban) that Billah was a SIMI member. This reflects either Garg's prejudice or a deliberate attempt on his part to mislead the tribunal. As the point person of the Andhra Pradesh police for all SIMI cases before the tribunal, Garg swore an oath that he had no, repeat no, personal knowledge of the cases and was deposing entirely from documents given him by various investigating officers. Yet, none of the documents except his says Billah is a SIMI member.

All the allegations against Billah seem to flow from prejudice. The police have been smarting since 2006 when Billah mocked them with his bold decision to assist SIMI's legal team in hearings by the previous tribunal. "Policemen came to me and said, 'Why the hell have you come here if you are not with SIMI?'" Billah recalls. "They said I was making a terrible mistake."

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

A Doubtful Crime, And Years Of Unfair Punishment

*Yasin Patel is the only SIMI activist to be convicted under POTA. His crime was nothing more serious than an offensive poster, Reports **AJIT SAHI***

**YASIN PATEL****Home:** New Delhi**Date of arrest:** May 26, 2002**Charges:** Pasting an 'anti-India' poster at Jamia Millia University**Evidence:** Poster showing a clenched fist and the names of UN Security Council members 'Confessions' of those arrested with Billah. CDs police claim to have seized at the meeting**Photo:** Shailendra Pandey

WE BELIEVE in God and God is great," a beaming Yasin Patel told TEHELKA on August 5, 2008 after the SIMI tribunal rejected the Centre's ban on SIMI. Yasin Patel has the dubious distinction of being the only SIMI activist to have been convicted under the draconian Prevention of Terrorism Act (POTA). His crime: allegedly sticking an "anti-India" poster inside Delhi's Jamia Millia Islamia University. His witnesses: only policemen. The evidence: the alleged poster.

A native of Ahmedabad, Patel left Gujarat following the anti-Muslim violence of February- March 2002. He was arrested in New Delhi on May 26 that year. In 2003, the court accepted the prosecution's argument that the alleged poster denigrated an image of India's flag and sentenced him to five years in jail under POTA and, concurrently, seven years for spreading disaffection against the Indian government.

Patel had told the court that he was arrested from home at midnight and the poster story was a plant. In any case, the poster in question, printed by SIMI in 1996, did not contain India's flag. Rather, it showed an image of a clenched fist and the maps of the five members of the UN Security Council: the US, Britain, Russia, China and France. Its text slammed the UN for becoming a handmaiden of these nations instead of staying neutral as per its mandate. On this ground, Patel appealed against his conviction before the High Court, which granted him bail in August 2004. By then, Patel had spent 27 months in jail.

During his trial, Patel recalls the public prosecutor hardly spoke; it was the judge SN Dhingra (who also tried the Parliament attack case) who countered the defence all the time. Police records showed Patel was arrested from the spot at 1.30 pm. and both the police and the accused were there until 7.30 pm. Why then, the defence lawyer asked, were no public witness found in this long period? Because, said the judge, people are afraid of SIMI. The judge saw the poster and said: "It looks more dangerous to me than an AK47." As the judge dictated Patel's oral submissions from the cross-examination to his typist, he misquoted one line. Patel spoke out to correct him. "Tell your client to watch his tongue," the judge bluntly told the defence lawyer. "He will regret it if he doesn't."

AMADARSA alumnus from Azamgarh in Uttar Pradesh, where he and SIMI's ex-president Shahid Badr Falahi were classmates, Patel joined SIMI in 1985 and stayed on till his mandatory retirement in 1997 at the age of 30. He rose to become secretary of SIMI's Uttar Pradesh unit. For a living, Patel set up a printing unit in Ahmedabad and published books on politics, socialism, psychology and languages. As an outspoken Muslim youth, he often called public meetings to ask Muslims to defend themselves against attacks on the community. This brought him under the police scanner which began harassing him in the 1990s.

Patel's parents and siblings are settled in Chicago and are US citizens. He, too, moved in 1992 and lived there for two years. At school, he topped his class on social science. "But I wore a beard and both the teachers and the students kept their distance from me," Patel recalls. "I realised I have no future in the US so I came back." Today, Patel says he will live and die in India. "The bones of the Muslims are buried in this land," he says. "Now India has to decide whether it wants us or not."

The Cry Of The Beloved Country

Chilling stories of fathers and brothers swallowed by midnight arrests, as family members lack the resources for legal redress, Reports **AJIT SAHI**



Face of terror? An alleged SIMI leader Imran Ansari in Bhopal for interrogation **Photo:AP**

ALTHOUGH THE police in the various states made a huge ruckus with their presence on the two or three days the SIMI tribunal held its hearing in their cities during June-July, 2008, the overwhelming dominance of the police was nowhere more evident than in Bhopal during July 1-3, where the Centre presented SIMI-related cases from Madhya Pradesh. As uniformed officers and their subordinates with guns holstered had the premises in their control, many plainclothesmen also moved around the government building where the makeshift courtroom had been prepared for the tribunal, perhaps keeping an eye out for troublemakers.

It was, then, no small act of courage when a fear-stricken group of Muslims, numbering about a dozen and clearly of little means, landed at the tribunal hearings most tentatively and, speaking meekly, urged their plea be taken up. All travelling to Bhopal from small towns near and far, they had only heard from newspaper inserts that a tribunal somehow connected with SIMI had arrived in the state capital. Though they had no idea about its framework of inquiry, they still decided to take their chance. They were led by a local lawyer, a Muslim, most sincere and earnest but, certainly, not much tuned into the possibilities that this tribunal could offer this group. Each one of them has a tragic tale to tell with brothers and sons arrested by police over patently fabricated charges of being SIMI members. The tribunal did accept their affidavits, but that was more for the record. Justice, or rather help, of the sort they sought was not to be found here.

Outside the tribunal, this reporter spoke to a few of this group and found a disturbing pattern to their stories. It was clear that these scared people had little idea that they could actually be looking at a much longer haul than they realise now. Here are some of those chilling stories:

Tabrez Husain, 28, runs a photo studio some 150 km from Bhopal, in a tehsil called Narsinghgarh where his family has lived for 40 years. On April 2 this year, a dozen policemen landed at his house in the middle of the night and dragged his younger brother, Faisal Husain, away with them. "For three days we didn't know where he was," Tabrez told TEHELKA. On the third day, he read in the newspapers that a SIMI activist had been arrested and wondered if it was his brother. On the night of April 5, the police returned with Faisal and searched the house. "They found nothing," Husain says. When the family asked for a panchnama — the official record — of the search, the police ignored their requests. Shortly, the police left with Faisal.

On April 8, Tabrez and his two other brothers, Aftab and Intekhab, had gone to the local court to appear before a judge in an eight-year-old case of rioting in which all the four brothers were implicated by the police. All of a sudden, someone called from the nearby village, where Aftab runs a shop as an optician, to say that the police wanted to search his shop. Aftab and Intekhab went across to be present during the police raid. After the search, the police took them along. Within hours, the two brothers were arrested on charges of sedition and unlawful activity, and for being a member of a terrorist organisation, which is punishable with life imprisonment.

Tabrez says neither his two brothers nor he were ever associated with SIMI. Faisal had, indeed, been a SIMI member but had submitted an affidavit in 2001 after the ban that he had quit the organisation. On June 6, the police filed a chargesheet against the three brothers. Sure enough, all have confessed to being SIMI members. The police claim they found pamphlets at their house announcing that Muslims will build Babri Masjid once again at the same spot in Ayodhya where it

was demolished in 1992. Tabrez fears for his brothers, as they have been implicated in the confessions of Safdar Nagori, the SIMI leader arrested in March at Indore. Tabrez fears he may be next in the line of fire.

Abdul Saleem, 74, is grieving for his youngest son, Abdul Mubeen, who was arrested on April 6 this year. Saleem lives in a tehsil in the Guna district, 175 km north of Bhopal, where he worked and retired as a reader in the magistrate's court. Mubeen, 28, ran a photocopy-cum-STD booth from a rented room 3 km from their home. "They came at 4 am and showed no warrant to arrest him," Saleem told TEHELKA.

The police also dragged away Saleem's two other sons, an 18-year-old grandson, Abdul Qadir, and a nephew. The next day, police released all but Mubeen and Qadir. On July 2, when the interview with Saleem was conducted, his youngest son and grandson were in judicial custody. Mubeen had once been a SIMI member. When the organisation was banned, he and some others were called in by the police and made to submit affidavits that they would stay away from SIMI. The police claim they seized pamphlets from Mubeen suggesting that the Amarnath Yatra be attacked. It is pointless to ask if the police found independent witnesses to these seizures.

RIZWAN KHAN, 24, sells cycle seat covers in his small shop in the Sehore district 50 km west of Bhopal. It is his father, Mohammad Rafeeq, who was arrested by the police as a SIMI member, even though he is 45 years old and way beyond SIMI's upper age limit of 30 years. The chargesheet filed claims that the police found "11 SIMI pamphlets and a book published by SIMI" from Rafeeq. The police claim that the book in Hindi is titled SIMI: 25 years of the journey of a struggle, 1977-2002. "I swear to God that my father has never been a member of SIMI or any such organisation," Khan told TEHELKA, more scared than agitated. "He is a simple man who has never even remotely had any political ideas." As is the standard with lower courts across India in such matters, his father has been denied bail. Khan was aquiver with both rage and fear as he talked haltingly about his options.

If some ex-SIMI members were forced by the police to submit affidavits in 2001 that they won't have anything to do anymore with SIMI, there is a scandalous story of police arresting someone this year who had, in 2001, submitted an affidavit that he had never been a member of SIMI. This is Shakir Ali, 29, and a resident of Narsingharh. Shakir and his older brother Zakir Ali together ran a grocery store. "My brother has never been a SIMI member," Zakir told TEHELKA. On April 2, at 1.15 am, about 15 policemen came to their house and took Shakir away. Zakir went to enquire at the local police station in the morning but was cold shouldered. Four days later, the police presented him before the court as being a member of a terrorist organisation. The evidence: The police say they seized the same pamphlet from him that claims Babri Masjid would be rebuilt.

Identical is the story of Irfan Ali, 34, who lived in a joint family with his older brother Majid Ali. The two brothers ran a readymade garments shop in Narsingharh. On the night of April 2, the police picked up Irfan from their home and booked him for sedition. When the police filed a chargesheet against him, they applied another charge: being a member of a terrorist organisation. "We filed for a bail application before the High Court but our lawyer was very pessimistic so we withdrew it," says Irfan's distraught brother, Majid.

Not one person in this group seems to possess the resources to mount any defence beyond the local courts. It seemed beyond both their intellectual and financial capacity to take the battle to the High Court, leave alone the Supreme Court. For most, while one earning family member has fallen off, there is now the additional burden of sustaining his family and paying his legal fees. Tabrez, whose three brothers are in jail, has been driven mad. He loses the strands of his thought in the middle of his speech, like an old man given to hopelessness after a long run of misery.

Meanwhile, the proceedings before the SIMI tribunal in Bhopal turned out to be in a class of their own. In the earlier hearings at Thiruvananthapuram, Bangalore, Udaipur and Hyderabad, the Centre brought as witnesses police officers who had had led investigations in the various cases. Jawahar Raja, the counsel for ex- SIMI president Shahid Badr Falahi, had fully used such opportunities to launch a scathing cross-examination of those officers, often catching them on the wrong foot, and making them admit their procedural failures such as in effecting seizures. But in Madhya Pradesh, only one investigating officer was brought by the government to depose before the tribunal. All others were senior officers who said they were deposing from their knowledge of the documents. A typical conversation went like this:

Jawahar Raja: Did the police apply for a search warrant before a magistrate?

Deponent: I cannot say. I am not the investigating officer.

Jawahar Raja: Is it true that the police carried its own stock witnesses?

Deponent: I cannot say. I am deposing from records.

Raja: I suggest to you that the police claim is false.

Deponent: The suggestion is denied.

And so forth. •

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

The Haunt Of Our Past Lives

*A leading Muslim outfit in Tamil Nadu is accused of killing Hindus. But the Centre's lawyers can't remember their own evidence, Reports **AJIT SAHI***



JAWAHIRULLAH MH

Home: Chennai, Tamil Nadu

Date of arrest: No arrest

Charges: His organisation TMMK accused of involvement in communal violence and association with SIMI

Evidence: No evidence apart from government allegations

MH JAWAHIRULLAH, 48, is a Muslim leader in Tamil Nadu. He often leads delegations to the government on issues concerning Muslims. In September 2007, his organisation, the Tamil Nadu Munnetra Kazhagam (TMMK), played a crucial role in securing reservations for Muslims in government jobs. Chief Minister M. Karunanidhi graced a TMMK public function and commended its work. Karunanidhi donated two ambulances to TMMK, which now runs 42 ambulances offering free services across the state. Hundreds of volunteers of the TMMK had jumped to rescue work in 2004 when the tsunami struck the state's coast. District officials of the worst-hit Nagapattinam city wrote them letters of thanks. In 2007, TMMK won an award for bringing the highest number of blood donors in emergencies.

Imagine, then, Jawahirullah's shock when he found that the background note the Centre issued with the February 7 notification banning SIMI said: "SIMI was closely associated with... TMMK and was involved in various

incidents of violence relating to killing of Hindus, especially persons associated with RSS/ Hindu Munnai organisations, since August, 1993." When the tribunal travelled to Chennai in June, the feisty Muslim leader landed before it and appealed that his organisation's name be struck off the background note. "What is the evidence against my client?" his counsel asked. Although the Central government's lawyers had made such a sweeping remark against TMMK, they had no clue if they had evidence.

So they asked for a day. The next day, Jawahirullah deposed before the tribunal. The Central government's lawyers cross-examined him. Of course, said Jawahirullah, he was a SIMI member, but left it way back in 1989 when he turned 30, the age of superannuation. SIMI was then a legitimate organisation. Jawahirullah admitted that, as SIMI's state president, he had taken on rent an office from the local mosque. But after he left SIMI, he had nothing to do with that transaction. At this, the Central government's lawyer claimed that Jawahirullah had been paying the rent for that office until the year 2000, which established his links with SIMI. Grandly, the Centre's lawyer waved alleged rent agreement letters between SIMI and the mosque committee for the years 1997 and 2000 saying it was written in Jawahirullah's name. The judge asked to see it. Turned out it had no signatures from Jawahirullah. Too bad, said the judge, can't be used against him, can't be taken on record. So much for the Centre's watertight case against SIMI and TMMK on "violence relating to killing of Hindus".

"Innocents are being caught and the real culprits are left scot free," Jawahirullah said to TEHELKA on the sidelines of the Chennai hearings. "In the end, only Muslims suffer." •

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

The History Appraiser Caught With His Books

Among Abdul Razik's crimes: books, old issues of a SIMI magazine and a talk on Muslims in the freedom struggle, Reports **AJIT SAHI**



ABDUL RAZIK

Home: Kottayam, Kerala

Date of arrest: August 15, 2006

Charges: Criminal conspiracy, sedition, unlawful association

Evidence: Possession of a book published in Pakistan, issues of Vivekam, a SIMI magazine published in Malayalam before the ban, and a booklet on State atrocities

ON AUGUST 15, 2006, in his hometown of Kottayam in Kerala, Abdul Razik boarded a 6 am bus for a three-hour journey to a village up north. To mark Independence Day, the village Muslims had invited Razik, a scholar of some repute in the community, to speak on the role of Muslims in India's freedom struggle. At 10 am, a group of 18 assembled at the ironically named Happy Auditorium. When Razik started his lecture, three policemen he had earlier seen in a jeep outside entered the hall. "They browsed through my notes and questioned me," Razik told TEHELKA during an interview at Thiruvananthapuram.

The entire group was taken into custody but 13 were let off. Five, including Razik, were arrested and charged with (a) criminal conspiracy to commit an offence punishable with death or life imprisonment; (b) sedition by way of attempting to bring hatred or contempt against the government and "excite disaffection" towards it; (c) being a member of an unlawful association (yes, SIMI, again); and (d) participating in its meetings to incite unlawful activity. So off went Razik and the other four to jail.

The police claim this was a secret meeting called by SIMI, but cite no proof. The organisers deny any SIMI link and say they put out notices in the area, including at the mosque. Happy Auditorium sits squat in the middle of the village, with bustling shops around, including a well patronised bakery- cum-teashop. The law says the police must get "independent and respectable inhabitants of the locality in which the place to be searched is situated" to stand witness. One imagines there would have been no dearth of witnesses around a place like Happy Auditorium. But the FIR against Razik does not cite any such witnesses, nor does it state whether the police even tried to find any. The only witnesses cited are two policemen.

The police say the five arrested were SIMI activists. The host of the meeting, a local by the name of Nizamudheen, denies associating with SIMI. This should be easy to settle: the police have a list of SIMI members seized from its office sealed at the time it was banned in 2001. But the police make no reference to that list. Instead, they say they collected the list of SIMI members from the Intelligence Bureau, without explaining how that list can be deemed incontrovertibly genuine.

From Razik, the police seized a book titled Mass Resistance in Kashmir: Origins, Evolutions, Options. This book is authored by a Pakistani scholar, Tahir Amin, and is published by the Institute of Policy Studies, Islamabad. The book was issued to Razik by a library run by the Jamaat- e-Islami in Kerala. It certainly reflects the typical Pakistani position on Kashmir. But is the possession of this book unlawful? The Kerala police wrote to the Centre asking if the book is banned. The Centre hasn't yet answered. The police have initiated no action against the Jamaat library that owned it.

The “banned SIMI literature” police claim to have seized includes back issues of SIMI’s Malayalam magazine, Vivekam, published before the ban. Vivekam was registered with the Registrar of Newspapers of India and sold by subscription and on newsstands. The issues allegedly seized are of 1993, 1994, 1998 and 2000. No cases were made out against Vivekam in those years or afterwards. The police also seized from Razik a booklet with articles on the “repression of Muslims” by state agencies. Alleging misdeeds by the State can’t be seditious, can it?

Yet, Razik spent 65 days in jail. The Kerala High Court denied him bail thrice, relenting only when the police failed to submit an update on the investigation, which the judge had repeatedly ordered. This February, the police requested the district collector’s sanction to begin prosecution. Six months later, such sanction is still awaited. The chargesheet is yet to be filed. The trial is yet to begin. Razik, 29, says he has been framed because he was a SIMI member from 1996 until the ban. Razik holds MA and B.ED degrees. He has worked as an editor of religious books in Urdu and Malayalam. His harassment by the police and intelligence agencies began with the ban. His house was often searched; he was often questioned. Never was a case found against him. Even though the ban on SIMI is lifted, the Damocles sword still hangs over him. “I wasn’t angry when I was in jail,” Razik says. “I kept praying to god. I was mentally prepared to be in prison a long time.”

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

A Man Of God, Not A Man Of Terror

*The Centre casually links a septuagenarian religious leader with SIMI — and then fails to sustain its reckless accusation against him, reports **AJIT SAHI***


ATTA-UR-REHMAN KURESHI
Home: Saharanpur, UP

Date of arrest: December 27, 2001

Charges: Government's background note alleges Wahadat-i-Islami is a SIMI front

Evidence: No evidence

A SCRAP DEALER in the west Uttar Pradesh town of Saharanpur, 70-year-old Atta-urrehman Kureshi hardly seems a candidate to be tempted by terrorist ambitions. Kureshi set up Wahadat-e-Islami (Unity of Islam) in 1994 to propagate Islam.

In July-end this year, an outraged Kureshi appeared before the SIMI tribunal in New Delhi with a plea with which the judge was by now quite familiar: to strike off his organisation's name from the background note, which had claimed: "SIMI is reported to be having many cover / front organisations. At the All-India level these [include] ...Wahadat-e-Islami."

Kureshi told the judge he had long passed the upper age limit of 30 years for SIMI membership when it was launched in 1977. He demanded to be told the basis on which his outfit was linked with it. (The paragraph names 60 organisations across India, including one Association for Rural Development and Research and Minority Rights Watch in Kerala.) As ever,

the Central Government's lawyers hadn't a clue who Kureshi was and why their backgrounder named his organisation. But surprisingly, in his cross-examination, the first question the Centre's lawyer asked him was, "Are you Yasin Patel's father-in-law?" Perplexed, Kureshi said he wasn't, but volunteered that Patel was his friend's son-in-law.

Patel, a former SIMI office bearer, is the legal representative of ex-SIMI president, Shahid Badr Falahi, who contested the ban at the tribunal. Sentenced to seven years in jail and out on bail, Patel was attending the tribunal hearings in Delhi. Moments before they stepped inside the courtroom, Patel introduced Kureshi to the SIMI lawyers as "my father in-law's friend". Standing nearby, the government lawyer perhaps misheard and, in the absence of any other evidence, decided to use it to connect him with SIMI.

A year ago, the Wahadat-e-Islami held a meet on the 'Role of Muslims in Indian Politics' at Lucknow. Two years ago, it had organised 'Islam and World Peace — Programme against International Terrorism'. Yet he is the main accused in the infamous Surat Case, a case that reflects the never-ending persecution of these Muslims and that is profiled in another column.

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

Dissent Or Don't, You're Damned Either Way

*Since when did protest get you called a jihadi? Ask M. Elliyas, jailed under a ludicrous law,
Reports* **AJIT SAHI**

ONE MORNING in July, a nattily dressed man named M. Elliyas arrived at the SIMI tribunal's sitting at Mumbai and, speaking confidently in English, demanded that his name be struck off the background note that the Centre had issued with its February 7 notification banning SIMI. The note alleged that Elliyas "incited" local Muslims in Pune, who "staged a demonstration" to protest the municipality razing some illegal construction. "When exactly did this happen?" he asked the battery of Central Government lawyers, who shuffled papers and hummed and hawed but couldn't find more details of their own allegations against him. He volunteered: on the day of the event he was visiting the municipal office to find how to make a birth certificate for his newly-born daughter. Even the local police have never questioned him in that case. Then why name him in the background note?

But Elliyas, a successful, 40-year-old IT consultant who topped his Microsoft exam with 99 percent marks, is hardly surprised. Elliyas was a SIMI member during the 1990s and retired when he turned 30, three years before the ban. In the seven years since the ban on SIMI, the Maharashtra police have harassed him no end. He told TEHELKA that when the police couldn't find anything against him, they booked him under a humiliating law called the 'Maharashtra Bad Persons, Slumlords and Bootleggers Act'. It is ridiculous that Elliyas spent a year in jail in 2001 under this law.

In his affidavit, Elliyas wrote that the statement against him in the background note "seems to reflect the Central Government's intolerance of any democratic expression by Muslim members of the public and an attempt is being made to link every such expression with the activities of SIMI to stifle the same". When Tribunal Judge Geeta Mittal sought to soothe him, Elliyas, in a voice choked with controlled emotion, asked: "What does this government want? Should we actually become terrorists?"

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

‘What If It Was Me Or My Father?’

*Chasing the SIMI Tribunal’s trail was not easy but exposing one of the biggest lies was worth every moment, writes **AJIT SAHI** after three months in the field*

State is organised violence. — MOHANDAS AKRAM CHAND GANDHI

AS A reporter, I take vainglorious pride in rarely being distracted on the job. But the morning of June 12 this year turned into a testing moment. I was in Hyderabad, sitting in the living room of Moutasim Billah, a 22-year-old bearded Muslim, an engineering college dropout. Billah, who wears the traditional Muslim skullcap, is implicated in more cases of terrorism and sedition than I have cared to count. As he spoke without emotion of his 90 days in prison that had ended only hours earlier, I pretended to fill my notebook. But unknown to the six-odd youngsters crowding the small room, I desperately searched for an excuse to send out two young boys not much older than eight years in age so that they would be spared Billah's chilling story of persecution and injustice.

Their chins on their palms, their elbows on their knees, the two boys seemed to soak in the alleged terrorist's every word. One brought me water when I asked for it but was back on his haunches instantly. I don't know their names because, for once, I was loathe to make them my story. As neither Billah's home nor his tale was my domain, the boys, to my discomfort, sat through his storytelling. My thoughts raced then as they race now: what have they made of Billah's staccato narrative of the unending humiliations of beatings, torture, jail, false charges? How far have they internalised Billah's story? How amplified is it in their perception? Celebrated reporter Robert Fisk of Britain's *The Independent* once opined why the Taliban of Afghanistan turned out so regressive: driven away from their motherland, growing up in the refugee camps of Pakistan, those Afghan youngsters perhaps sought to recreate the sad and repressive world of their camps once they marched victoriously back into Kabul.

To be sure, when I started investigating the state's supposedly open-and-shut case against the Students' Islamic Movement of India (SIMI), I knew it was a singular story, for rarely had there been an issue in which "the other point of view" had been so denied a right to exist by just about everyone: the government, the police, much of the judiciary and the media, and the (largely Hindu) middle class. Anyone I spoke with, everything I read, had only this to say: SIMI is a terrorist organisation. It is working to break up India. It must be contained. My mother, childhood friends, cousins were stunned into silence when I shared with them that I was probing SIMI, and, so far, it seemed the group was in the clear.

Indeed, the more I read the more I found a complete absence of that foundational element of sustainable accusation: evidence. I'm a journalist from the 1980s when the word of the police wasn't to be trusted, unlike today, when for the corporate media, to borrow a nomenclature from Noam Chomsky and Arundhati Roy, that word alone is the overwhelming proof of culpability. When I first landed the Centre's Background Note (issued with the ban notification of February 7, 2008), it was so ridiculous a document that I knew I was on the right track.

Yet, it has been a difficult story to fetch because there is no doubt SIMI is a fundamentalist Islamist organisation that, as the Centre says, believes in the propagation of Islam. Its stated ideology clashes with the idea of India that the globalised, Western-aspiring, stockmarket punting middle classes have mounted to give a thumbs up to "development": nuclear deals, large dams, more IITs, more IIMs, Indian companies buying international ones, and what not.

Until its ban on September 27, 2001, SIMI had constantly pushed the envelope, engaging with radical Islamists in Pakistan and the Middle East, stridently suggesting that a pan-global Islamic agenda was of direct consequence for Indian Muslims. Employed with a news agency at the time, I had interviewed SIMI's then president, Shahid Badr Falahi, just days before the group was banned and he was arrested. Among other questions, I had asked him what SIMI thought of revered leaders like Mahatma Gandhi. Of course, Gandhi failed to make the grade with SIMI. In purist Islam, there are only Allah, the Holy Quran, Prophet Mohammad and the story of his life as a beacon.

BUT AT another level, this was an easy story to pursue, for all I had to do was to remember the basics: That the idea of India is not homogenised, that the founding fathers of the Indian Republic promised fundamental rights to all citizens to peacefully practice their religions and faiths and navigate their lives as they wanted. In terms of the law, it was still easier: I only had to reject prejudice and look for evidence. I just needed to remember: every single accused Indian Muslim is as bona fide an Indian citizen as I am. "Is there a doubt?" former SIMI general secretary Ziaduddin Siddiqui, who lives in Aurangabad and has a bouquet of criminal cases against him, had laughed when I had made this comment to him.

But this is no dry story rising from lifeless court documents. It has been an emotional rollercoaster to sit across young boys barely into manhood, their foreheads creased by sleepless nights worried stiff over the jailing of a father, a brother, wondering endlessly, "Will this end? Is this for real? What do I do now? Where do I go now? Will he survive this? Will I survive this?" As I interviewed countless Muslims so weathered, I couldn't but ask myself, "What if this was me? What if it was my brother, my father in jail?"

In the three months I chased this story across India I found tremendous anxiety among not just SIMI members or sympathisers but also those who reject SIMI'S puritan ideology and prefer India's syncretic Islam of a thousand years. For many such Muslims, the idea of India as promised them by the Constitution is fast fading, and they need urgent reassurances that the state hasn't abandoned them.

Falahi and scores of his brethren may not know it, but the Indian establishment they are ranged against has, in a way, elevated them to the status of Mahatma Gandhi by invoking an oppressive British law to charge them that the erstwhile rulers of India had used to convict Gandhi. This is Section 124A of the Indian Penal Code of 1860. In March 1922, standing in the court of Ahmedabad's District & Sessions Judge, CM Broomfield, accused of sedition, this is how Mahatma Gandhi described this obnoxious law: "Section 124A under which I am happily charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence. But the charges under which (I am) charged is one under which mere promotion of disaffection is a crime."

While replacing the phrase "His Majesty or the Government established by law in British India" with "Government established by law in India", the law stands today as it did in 1922. "Whoever by words," it says, "either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years..."

When TEHELKA began publishing this series three weeks ago, I passed on a copy to Falahi's lawyers when we met in the last days of the Tribunal at the Delhi High Court. Unexpectedly, one of them asked me to sign on it, giving me a rare moment of self-indulgence. "To the SIMI bravehearts," I scribbled in the magazine, then added as a considered afterthought: "Someday, this will be used against me as evidence."

From Tehelka Magazine, Vol 5, Issue 33, Dated Aug 23, 2008

The Sound And The Fury

Police and intelligence agencies insist that former SIMI leader Safdar Nagori is the outfit's evil mastermind. But again, there is little evidence to nail him, reports **AJIT SAHI**

ON MARCH 26 this year, the police in Madhya Pradesh's Indore city received "secret information" that a dreaded leader of the banned Islamist terror group, the Students' Islamic Movement of India (SIMI), was holding a secret meeting in a jungle on the banks of a river near a factory called Silver Oaks. In the evening, the police raided the spot only to be told that the suspects, a group of 12-13, had left a while earlier. Not ones to lose hope, the police asked their "secret informers" to "develop" their information. The "developed" information revealed that the group were holed up in a house in the city's Manikbag locality.

Sure enough, policemen raided the location the next evening and arrested Safdar Nagori, the much-wanted SIMI leader, and 13 others. Arms, cartridges, "jungle rope" and computers were among the items seized from them.

Nagori's arrest was a sensation for the media. Quoting unnamed police and intelligence sources, newspapers and TV news channels claimed that Nagori was SIMI's top "jihadist ideologue", and his arrest would help "unravel jihadist networks responsible for major terrorist bombings". The media also reported that although Nagori didn't "personally carry out terror attacks", he provided logistics and finance to others who did.

The police said that Nagori, a former SIMI general secretary, had evaded arrest since the organisation was first banned in September 2001. Since then, the police have claimed to have found his links with terror attacks in six states, most notably the local train bombings in Mumbai on July 11, 2006, in which 187 people were killed (see page 20). Since his arrest, intelligence agencies claimed Nagori was networked with Pakistan's ISI, the Lashkar-e- Tayaba and "West Asia-based supporters". Police from Maharashtra, Andhra Pradesh, Karnataka, Kerala, Haryana and Uttar Pradesh have questioned Nagori in connection with terror attacks in their states. Police claim a web of terror networks has emerged, with Nagori at its nucleus, following his arrest.

But, as with so many other cases against alleged SIMI accused chronicled in TEHELKA's special report, *The SIMI Fictions*, published last week, the police flouted several crucial procedures in arresting Nagori, throwing into doubt the entire police story. No reference was made to the receipt of the "secret information" in the station diary. Readers will recall from last week's coverage that the law stipulates that independent witnesses, who should be respectable local people, must testify to arrests and seizures. But, in Indore, the police took the same two witnesses — Shyam Lal and Kailash — on both raids from the police station, even though they were in two different areas, without even a semblance of an attempt to find local inhabitants as witnesses, casting further doubt on the version of the police.

Look also at the scene of the arrest. The police claim Nagori and four others were seated in a room, eight others in a second room. About five of them had pistols. The police knocked at the doors, entered the rooms, and arrested them. It appears rather out of character that not one of the allegedly "hardcore" terrorists, who, if the police claim is to be believed, have risked limb and life for years to perpetrate ghastly acts against India, fired a single bullet to resist the police. Rather, each gave in meekly.

In any case, police have so far given few hints of the clinching evidence they have against Nagori. For a dreaded terror mastermind wanted in six states and evading arrest for seven years, the key piece of evidence the police have against him is nothing but a confessional statement that Nagori allegedly gave on March 28 — within a day of his arrest! (A confessional statement is valid only if it is voluntary. It cannot be forced and can certainly not be obtained under torture. It is common sense that no accused would ever make a voluntary statement unless he or she was overcome with remorse.) It appears that those arrested on March 27 were struck by remorse the very next day and volunteered confessions admitting to jihadist activities they had singlemindedly planned and executed for years.

In any case, according to the law, a confessional statement made before a police officer cannot be used against him as evidence but must be made before a magistrate. The police are to apply for a confessional hearing under Section 164 of the Code of Criminal Procedure, which says: "The magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily."

SINCENAGORI's confession was such a goldmine to the police, one would think it a no-brainer for the police to take the remorseful terrorist to a magistrate and convert his statement to useable evidence. The police made no such move. But why wouldn't they, if Nagori's confession was genuine? All the big links that police across six states have found between local terror attacks and Nagori are based entirely on his confession — and on the confessions of numerous others arrested in different cities at different times. Indeed, what becomes clear on examining the various cases with which Nagori is connected (such as the Mumbai trains blasts of 2006), is that the only web that emerges is of the alleged confessions the police say the accused have made. In every single instance, the accused deny they made any confessions the minute they are brought before any magistrate, in any state.

The Madhya Pradesh police brought Nagori's case before the SIMI Tribunal during its hearings at Bhopal on July 1-3, 2008. The case papers and seizure memos they filed describe the guns and ammunition found on the accused at the time of their arrest as 7.66mm bore pistols with live cartridges on which KF7.65 was written. But that could describe just about any gun and ammunition. What the police should have done was to identify the gun by its distinctive shape, number and any other distinctive characteristics. (This is often done by drawing an outline of the gun noting its chassis numbers, etc.) None of this has been done in this case, leaving ample scope for manipulation and planting by overzealous police officers, keen on quick convictions.

It can be expected that all these arguments will come up when Nagori's defence is mounted in a courtroom. But that journey won't be easy. Shortly after Nagori was arrested, an elderly Muslim lawyer — so terrified he doesn't want to be identified — from a nearby town travelled to Indore. He had been engaged by Nagori's family to represent him. But before he could reach the court, a group of people that eyewitnesses said included lawyers connected with Hindutva organisations collared him and began beating him. A local police officer intervened to save him, took him away, and made him give a signed declaration saying he would not return to defend Nagori.

The 13 arrested with Nagori include another SIMI activist the police claim is a prized catch: Shibly Peedical Abdul. A Kerala native, he is said to have confessed to organising four terror training camps for SIMI activists. The police claim that the first camp was held in Karnataka's Hubli district in April 2007, where 17 SIMI activists were trained in martial arts, swimming, trekking, shooting, motorcycle riding and driving. The second was organised in August 2007 in Dharwad, also in Karnataka. In this, 11 SIMI activists participated. The third was held in November 2007 in the Choral forests near Indore. In this, 17 SIMI activists were trained in pistol firing, and making petrol-bombs and rope bridges over rivers. The fourth camp was held in Wagan in Kerala where 16 SIMI activists were trained in trekking, swimming and motorcycle riding, among other activities.

Conveniently, several others arrested along with Nagori are implicated by being named as having imparted this training. The police said Shibly indoctrinated participants in Islamist ideologies: a human's life should be conducted as per Islam; Islam should rule the world; the enemies of Islam should be engaged in jihad; there should be a return of the Khilafat. But the confession is suspect since, although the Khilafat was technically abolished in Turkey by Mustafa Kemal Ataturk in 1924, its fate was clear at the end of the First World War in 1919, when Muslims the world over had begun protesting against its impending abolition. Certainly, if Shibly made that statement, SIMI argued before the tribunal, he would more likely refer to 1919 than to 1924.

Once again, the police did not take Shibly to a magistrate to record his all-important confession. To collect evidence, on April 2, five days after the arrest, the police raided the forests near Indore where the alleged camps were held and recovered explosives and other incriminating material. Once again the witnesses to the seizures are suspect. Then, the investigating officer who sealed the seized material carried the seal with him and did not hand it to a neutral person to eliminate any scope of tampering.

Let's recap what the police have against Nagori, the SIMI mastermind, and his dreaded terrorists: confessions made to police officers, inadmissible as evidence; witnesses who are not "local, respectable" people as the law requires; the same witnesses in two different locations on two consecutive days; seizures whose seals continue to be in the possession of the police officer who can always tamper with seized material.

Given the pace at which courts work in our country, it will be a long while before Nagori stands trial and has a verdict pronounced on his case. Do watch this space

From Tehelka Magazine, Vol 5, Issue 33, Dated Aug 23, 2008

A Most Difficult Freedom To Gain

*Judges have been throwing out case after case against alleged SIMI activists because there is little evidence beyond confessions, reports **AJIT SAHI***

WHEN ABDULMubeen walked out of jail on August 6, 2008, his youngest daughter, Zainab, was too shy to speak with him as he reached home. She had been six months' old when he was arrested in September 2000 and, therefore, had no memory of him. Mubeen had been arrested for his alleged role in one terrorism-related case, but was quickly implicated in three others. He has since been acquitted in two and was given bail in the third in 2006. It has taken eight long years for him to get bail in the fourth case.

Ironically, just four days after he was released last week, The Hindustan Times wrote a full-page story on SIMI on August 10, detailing Mubeen's alleged role in terrorism. Among others, the newspaper identified him as "SIMI's first bomber". Mubeen was accused of carrying out a bombing in Agra in August 2000, which had killed four people. But in this very case, Mubeen was acquitted three-and-a-half years ago. "The judgements in my favour have nailed all these lies," Mubeen told TEHELKA from his village, Baghawa, in Uttar Pradesh.

In the Agra case, the police had claimed that the bomb exploded after Mubeen had left it in a room, and that those killed were terror operatives, too. But once again, the only evidence against Mubeen was his alleged confession which he denied having made. Yet, the case dragged on for five years. He was finally acquitted in February 2005 after the judge refused to accept his confession as evidence. Within a month of his arrest, Mubeen had also been made an accused in an explosion which took place in Kanpur, where a bomb had allegedly gone off in a garbage dump. No one had died. It took nearly three years before he was acquitted in this case in April 2003. The reason — no evidence.

Mubeen is now hopeful of an honourable acquittal in the remaining cases, since in these, too, the only evidence against him is his alleged confession. One case relates to a bombing in 2000 in Lucknow near a government building called Sahkarita Bhavan. In this case, he secured bail in 2006 on the ground that the only evidence against him was his confession. The fourth case is of a train bombing near Barabanki in August 2000. In this case, it has taken him eight years to get bail.

SINCE SIMI's banning in 2001, hundreds of its activists and supporters have been arrested across India and slapped with charges of sedition and unlawful activities such as waging war against the state. In due course, their criminal trials have wound their way at a snail's pace. The government propaganda has ceaselessly stressed that SIMI activists were hardcore militants spread far and wide. But in a majority of cases, the so-called SIMI activists have been acquitted.

In fact, on July 12, 2008, the Maharashtra government's top intelligence officer, PK Jain appeared before the SIMI tribunal (which later, on August 5, rejected the Centre's ban on SIMI), with a list of 107 cases registered in that state against alleged SIMI activists since 2001. By his own list, in 45 of these cases, the accused were acquitted or simply discharged. In only two of the 107 cases were the accused convicted. The rest of the cases are still pending trial, proving to be a living hell for the accused who suffer these lengthy trials.

The story in other states is no different. Mohammad Ashraf, a grocer in Kerala's Ernakulum district, was a member of SIMI until the ban. "I was on my way to a customer with his ration when the police stopped me," Ashraf recalls of the evening of September 27, 2001, the day of the ban. He spent the night in the police lock-up and secured bail the next day. But Ashraf's troubles were hardly over: over six years he spent a fortune fighting the case.

THE POLICE claimed that Ashraf was arrested while giving a speech in which he "criticised the Central government severely" and incited local Muslims to "create arson and protest the ban". The police said Ashraf "asked the people to wage war against the government". It was four years before Ashraf's trial began and then it lasted two-and-a-half years. Acquitting him in April 2008, the judge wrote that the key witness said he never saw Ashraf give a speech. Another witness

said he didn't know if Ashraf was a SIMI member. Three other witnesses, including Ashraf's landlord, debunked the prosecution's claims.

A mild-mannered man with a flowing beard and a pleasant smile, Ashraf, 28, married shortly after the case was launched. He has since been blessed with two daughters and a son. "This was the only case against me ever," Ashraf told TEHELKA in an interview at Thiruvananthapuram. Happy to be absolved, Ashraf is uneasy about getting embroiled again. "I don't think about it, but, yes, they can always bring another false case against me."

A harrowing case is that of Y Mohammad of Chennai. Mohammad, who converted as a teenager from Hinduism to Islam, was a member of SIMI until 2000 and left it when he got married. Police said he was arrested on September 28, 2001, for "criticising the Government of India" for banning SIMI. Mohammed, who works as a software programmer in an IT company, claimed he was arrested on the night of September 27. The defence said The Hindu of September 28 had reported his arrest. Chennai's then police commissioner had at the time said that two persons had been arrested on the midnight of September 27 and 28, and the media had reported Mohammed was one of them.

A reporter from a Tamil daily newspaper was summoned as a witness. Some witnesses, including a hotel owner, Ganesan, who had said they saw police arrest Mohammed on September 28, 2001 changed their versions. Ganesan said he signed his statement under police pressure.

The Central government brought this case as evidence before the SIMI tribunal during its hearing in Chennai on June 14 this year. Just 11 days later, on June 25, the court acquitted Mohammed saying the police had not produced any document to show that he was linked with SIMI since it was banned or that he had indulged in any terrorist activities.

In fact, the courts have acquitted the accused — whose arrests had been widely publicised — in many prominent terrorism cases. Despite the acquittals, the Centre still cited the following cases before the SIMI tribunal, even though the chargesheets did not even allege that the accused were SIMI members:

- January 23, 2000 — Explosive found near India Gate
- January 26, 2000 — Explosives found near the ramparts of Red Fort
- April 10, 2001 — Explosive substance in tiffin carrier at North Block Gate 2
- May 9, 2001 — Bomb explosion at Army HQ in New Delhi; explosive substance found behind South Block
- May 20, 2001 — Bomb blast at CGO complex, grenade launcher recovered

Some of these cases were so ridiculous that even the judge could not stop himself from commenting about them. Shortly after SIMI was banned in 2001, Delhi Police arrested a Muslim named Hatif Iqbal and accused him of holding a seditious meeting in a graveyard. He was charged with the usual crimes: promoting enmity between different groups on grounds of religion, race, etc.; sedition; being a member of an unlawful assembly; inciting others to unlawful activities.

The lone witness later turned hostile in the court. After a trial of more than 18 months, Delhi judge Babu Lal threw out the case. In disgust, the judge said that given the severity of the charge levelled — Section 124A of the Indian Penal Code which concerns sedition; levelled in the past

on the likes of Mahatma Gandhi — the least the police could have done was to have deputed an inspector as the investigating officer and not a sub-inspector.

One of the most shocking cases of the police failure to build a case against the accused relates to the bombing of a BEST bus (the local public transport) in Mumbai's suburban district 26 CURRENT AFFAIRS TEHELKA 23 AUGUST 2008 23 AUGUST 2008 TEHELKA CURRENT AFFAIRS 27 of Ghatkopar on December 2, 2002. Four people had lost their lives in that bombing, which had received wide coverage. Seven people were arrested in that case, two of whom were deported to India from Dubai. One of these two, Mohammad Altaf, was named as a crucial link in the conspiracy, having arranged lodging for one of the bombers, with a Muslim doctor, Mateen, at the city's JJ Hospital.

Once again, the holy grail of the police had been confessions, which were the only pillars supporting the prosecution's case.

BUT ALTAF's story was astounding. When he was brought before a magistrate, not only did he retract his earlier confession saying it was secured under pressure, he asked for a pen and paper and wrote in long hand a detailed statement of his own. To begin with, Altaf said he was never a member of SIMI; rather, he had been a member of the Students' Islamic Organisation, the youth wing of the Jamaat-e-Islami Hind that was an unequivocal rival to SIMI.

While he did accept arranging rooms for the alleged bomber with Dr Mateen, he said he had no clue that the person he had arranged the lodging for had terrorist ambitions. In any case, the trial court threw out the police case because all the confessions were identical and stereotypical. The state police has appealed against the order at the High Court.

That there have been scores of acquittals has made no difference to the Centre, which continues to insist that the accused in those cases should still be considered as terrorists and SIMI activists.

Look at this: in Para 10 of the Background Note issued with its notification of February 7, 2008 banning SIMI, the Central government wrote: "According to Intelligence Agencies, the bomb blast at Ghatkopar... clearly established close pan-Islamic linkages of ex-SIMI activists with the LeT (Lashkar-e-Tayaba) cadres in carrying out militant activities in the country".

This is the same Ghatkopar blast mentioned above, yet the paragraph conveniently forgets to mention that the accused had been acquitted. But just a page later, in paragraph 13, the Background Note says: "In Maharashtra, the SIMI ansars (activists)... were instructed to exploit the acquittal of SIMI workers accused in the Ghatkopar bomb blast for regrouping SIMI members and mobilising support for the organisation." So, effectively, gaining acquittals itself became a major handicap for the accused!

There have even been instances where the police in two different cities have tried to prosecute the same case against the same accused. It took a while before the judges caught on, and one of the two promptly threw out the case.

This happened in a case of 2001 in Nagpur, where a bomb was thrown at the house of a former employee of PTI news agency in Nagpur. Some 10 people were arrested in Maharashtra's Jalgaon district, and were promptly booked on the basis of their confessions. Except for two accused, all others were discharged even before the trial could begin because the court said there was no evidence against the others.

Says Jawahar Raja, SIMI's counsel who won the tribunal's ruling: "It is difficult to fathom why the Centre would refer these cases before the SIMI tribunal even after the accused have been either acquitted or discharged."

Description Of A Struggle

*A watertight case claimed by the prosecution in the horrific July 2006 Mumbai train blasts seems anything but that, with many accused reporting torture, finds **AJIT SAHI***

TIFFIN IN hand, Saeed Shaikh reached the gates of Mumbai's central prison on Arthur Road at 10.30 a.m. on June 28 this year as he'd done every day for eighteen months. It was a special meal of mutton that Saeed was bringing his father, Sohail, who had been incarcerated in the high-security jail for two years now without bail as one of the 13 people arrested for plotting and carrying out the Mumbai train blasts of July 11, 2006 that killed 187 people. A low-income darning and a faith healer from Pune, Sohail had failed to get bail, like the other accused, even from the Bombay High Court although the only evidence against him was a confession that he had long denied having made to the police. If anything, Sohail and the others had constantly complained of torture at the hands of the jail staff but had failed to secure any relief from the courts.

That day, as he reached the jail, Saeed sensed something was wrong. Over a hundred policemen had massed at the gate. The daily mulakat, the across-the-window brief conversations allowed between visitors and the accused, had been abruptly ended. Officials at the gate refused the lunch boxes from Saeed and the others, who were allowed by a court two years ago to bring home-cooked food for their relatives who are the accused in this case. Two police wireless vans were parked at the gate. "I heard some people say that the 'railway ones' are being thrashed inside," Saeed told TEHELKA in an interview during a visit to the High Court where he has filed a petition over his father's torture. The 'railway ones' is colloquially used to refer to the accused of the Mumbai train blasts.

Saeed had heard that a police van had emerged from inside the prison shortly before he had reached, and sped away. At 1.30 pm, the gates suddenly opened and another van sped out. A third followed 20 minutes later. "I saw abba [father] through the grill at the back of this last vehicle," Saeed says quietly. "He was soaked in blood." The father, too, saw his son for a fleeting moment and shouted: "We've all been badly beaten." The relatives later found out that the jail authorities had thrashed dozens of accused of three different cases, then divided them into three groups and sent them to prisons in other cities. Naturally, the anxious relatives asked to be taken to the prison authorities but were rebuffed.

A prime accused in the Mumbai train blasts case is a medical doctor, Tanveer Ahmad Ansari. As with most of the alleged SIMI activists held in criminal cases across India, he, too, has a history with the police: he was arrested on the day SIMI was first banned in September 2001. (The police had claimed that the next day when the magistrate gave bail to him and six others, they shouted slogans "hailing SIMI" and were promptly rearrested. Seven years later, both cases are still pending trial.)

Shortly after one of the vans carrying Tanveer had left, his brother, Ishtiyaq Ahmed, saw that police van at a crossing while returning on his motorcycle from Mumbai's satellite town of Bhiwandi. As he desperately tried to talk to his brother through the van's narrow windows, Tanveer told him: "We have been beaten badly. My hand is broken." Another accused, Kamal Ansari, had a bandage around his right hand. A third accused, Majid, had his head plastered. On July 12, Ishtiyaq traveled to the Nagpur prison to meet his brother. He found that Tanveer's left hand was fractured, his right shoulder was badly hurt, and he had sores all over his body. In the two weeks since the attacks, no medical examination had been conducted on any of the accused.

ON JULY 7, 2008, Sohail Shaikh's son, Saeed, filed a petition at the High Court alleging that his father and around 39 other prisoners (including those accused in other cases such as the bombing at Malegaon city and of an alleged arms haul in Aurangabad) were "assaulted brutally for almost two hours with batons, lathis, belts and stones". He alleged that about 75 jail employees as well as other convicts egged on by them had attacked these accused when they refused to leave the prison unless they were shown the court orders mandating their transfer.

"(Over) the last six months there was (an) escalation of torture and humiliation of the accused by prison staff," the petition said. The High Court asked the jail authorities to file a report on the

allegations. Over a month later, the case proceeds at the usual slow pace, bogged down with more and more fact-finding.

In fact, the accused of the July 2006 Mumbai train blasts case have long alleged torture and harassment, saying the police have been pressuring them to turn “approvers” so that they can implicate the other accused. They say the anger of the police and the jail authorities has soared as none of them has broken down and turned an approver. On March 25, another accused, Ehtesham Siddiqui, was severely assaulted by the policemen who brought him to the court from the jail. The trial court asked him to speak but, says a relative, he “was too scared to do so”. Gaining courage a week later, he filed a detailed statement on the assault.

The trouble for these accused began on July 11, 2006, when seven bombs went off in the evening in 1st class compartments of seven local trains of Mumbai over a few minutes. Within hours, the government had said it suspected the hand of the Pakistan-based terrorist outfit, Lashkar-e-Tayaba. Within a day, SIMI’s name was being mentioned as connected with the blasts.

The police filed seven cases for the seven blasts. The next day, these cases were transferred to the Anti-Terrorism Squad of Mumbai Police and bunched together. Two months later, the ATS applied the draconian Maharashtra Control of Organised Crime Act 1999 (MCOCA), which is the state’s equivalent of the now-lapsed Prevention of Terrorism Act (POTA). Like POTA, a key feature of MCOCA is that it allows judges to accept a confession made by an accused before a police officer as evidence in the trial against him.

Sure enough, the investigating officer, Sadashiv Patil’s investigations “revealed” that SIMI members were involved in the blasts as “major conspirator/ offender”. While 13 accused were arrested, another 15, including 10 Pakistanis, were shown as absconding. Nine of these ten Pakistanis are random names like Kasam Ali and Ammu Jaan with “full name and address not known”. Two more Pakistani nationals have been shown as “deceased”. The conspiracy goes all the way back to 1999 when, according to the ATS, the key Pakistani national, Azam Cheema alias Babaji of Bahawalpur, hatched conspiracies against India with some of the Indian Muslims who have now been arrested. Cheema allegedly supplied “money, men and explosives”.

The chargesheet in this case is as thin on evidence as thick it is in size, running as it does into a staggering 10,000 pages. For example, the ATS says that the prime accused among the arrested, Dr Tanveer Ansari, travelled in May 2004 from Mumbai by air to Teheran from where he was taken to Bahawalpur in Pakistan, and then to Muzaffarabad in Pakistan-occupied Kashmir, where he trained in “handling and use of arms and explosives in a Lashkar-e- Tayaba training camp”. Ansari returned in July 2004 “by the same route”. Of course, there is no evidence of this besides the assorted confessions, since denied several times over.

The most stunning allegation against Ansari is that he “procured considerable quantity of liquid chemicals viz. Acetone, Hydrogen Peroxide and Sulphuric Acid in order to cause explosion out of the combination of these chemicals. The bottles of these chemicals were stored by him in a locker of Saboo Siddiqui Hospital in Nagpada (a Mumbai locality), which have been taken charge of...” It is certainly common knowledge that such chemicals are used in a variety of “non-explosive” uses, ranging from cleaning toilets to nail polish. Besides, hospitals routinely store these chemicals for their everyday use.

Three months after the blasts, the ATS claims, one of the accused led it to a spot near railway tracks in Dahisar, a locality far north of Mumbai, where “a bag containing cooker gas gates (sic), whistles, electrical wires, plastic box with printed circuit board were recovered...” — three months after the blasts.

BEYOND THIS, there is little evidence on offer. The allegations of the ATS against each of the accused are elaborate: travels for terrorist training, hatching conspiracies, raising funds (including through hawala transactions that are anyway impossible to document), arranging the explosive materials, making the bombs, carrying the bombs to the stations and planting them in trains. The only small problem is that nearly all of it is based on the confessions of the accused.

Once again, the accused have confessed in batches together. Three accused made confessions on the same day: October 7, 2006. Four others followed the next day. Subsequently, 10 retracted their confessions. One has denied ever making it.

Accused Ehtesham Siddiqui is charged with having “supervised” the assembling of the explosive devices and planting the explosive bag in one of the trains whose blast killed 31 people. Siddiqui is accused of having joined a meeting a week prior to the blasts in Ujjain that had been called by SIMI leader Safdar Nagori (whose story is profiled on page 23). ATS says the meeting decided to fight “against VHP, RSS, Bajrang Dal”. The police also provide a look into his personal life to bolster their case: “In April 2005, he was married but he could not go well with his wife owing to his extreme and orthodox thoughts and ultimately his wife left him within six months of his marriage.”

Investigating officer Sadashiv Patil admits that his breathtaking prose on the multi-layered conspiracy running across several countries since 1999 is totally premised on confessions. In his deposition before the SIMI Tribunal headed by Delhi High Court judge Geeta Mittal during July 9-12, 2008, Patel wrote: “During the course of the investigations, statements of aforesaid 10 arrested accused related to SIMI were also recorded by the investigating machinery which clearly reveals role played by them as a member of SIMI organisation in the said anti-national attack...” For example, an accused named Faizal Aatur Shaikh, “as per his own confessional statement, has gone to Pakistan...”

What is sinister is that confessions of some of the accused made to the police were recorded under MCOCA, whose provisions allow such confessions to be used as evidence against these accused although they later told the magistrate at the first available opportunity that they were tortured to sign those confessions, or that they never made any such confessions.

Even more sinister is that the identify of numerous prosecution witnesses, whose statements “equally revealed active involvement” of SIMI members, have been hidden — under orders from the trial judge (called the MCOCA court) hearing this case! The pretext is that the protection and the safety of these witnesses require hiding their identity. Such witnesses are now named only as F-129 or AD-894 or A-52 — and yet, there testimonies will be allowed to stand in the trial.

Indeed, the modus operandi of the ATS appears quite clear. The list of 13 accused arrested in the case shows two dates of arrest for each one. Therein lies a tale. The first date of arrest of Faizal Aatur Shaikh is July 27, 2006. Till September 30, 2006, the police did not show him to be at all involved with the blasts, saying that he had “led a cell” that had surveyed for the other group that was to carry out the blasts. But that day onwards, the police began to claim he was among the actual perpetrators. His second date of arrest comes then.

The most interesting part is that even the alleged confessions of many don’t say that they are members of SIMI.

Let’s return to the torture. On October 6, 2006, the prosecution told a magistrate that seven of the accused cannot be produced before him as they were “being interrogated”, even though the police had been ordered to do so. The reason, says SIMI lawyer, is that they were badly tortured and the bruises on their bodies would have revealed that to the magistrate. Accused Faizal Aatur Shaikh was not even allowed to meet his lawyer although the latter moved several applications.

SIMI counsel Jawahar Raja thus confronted Sadashiv Patil at the Tribunal hearings in July:

Raja: On November 9, seven accused retracted their confessions.

Patil: They did, but these have been recorded under MCOCA (so they are valid).

Raja: The accused have repeatedly filed complaints of torture.

Patil: Yes, they have. But they are all false.

Raja: Did you write to Investigating Officers of the 2001 SIMI ban cases to crosscheck the names of SIMI members?

Patil: It was not necessary.

And the Kafkaesque trial thus goes on.

From Tehelka Magazine, Vol 5, Issue 33, Dated Aug 23, 2008

The Left Hand Doesn't Know, Or Doesn't It?

*The bizarre case of Ziauddin Siddiqui, injured in a clash with police, given compensation — and then accused of rioting and sedition, Reports **AJIT SAHI***



ZIAUDDIN SIDDIQUI

Home: Aurangabad, Maharashtra

Date of arrest: December 27, 2001

Charges: Sedition, rioting, unlawful assembly, implicated in Surat case

Evidence: None, except that Siddiqui was a former SIMI office bearer

AN URDU couplet is always at hand as Ziauddin Siddiqui explains life's small and big events. With a mien more Sufi than fundamentalist Islamist, the 46-yearold pharmacist in Maharashtra's Aurangabad is unruffled as he slowly details the criminal cases against him, each more bizarre than the other. The case that takes the cake is the one in which Siddiqui and 95 others were implicated on December 6, 1999, when they held symbolic protests in the city to mark the seventh anniversary of the demolition of Ayodhya's Babri Masjid at the hands of Hindu zealots in 1992.

That day in 1999, about a hundred activists belonging to a local organisation called the Muslim Action Committee gathered at a city square in Aurangabad and, as in every year since 1992, courted arrest. Around the same time, an equal number of activists from the local Samajwadi Party unit, which always has an eye on the Muslim vote, did likewise on the same issue. Both sets of protestors were taken and held together in a stadium ground next to the police headquarter.

As per practise, all of them would have been let off after some paperwork. But there was some altercation and the police and the protestors clashed. The police fired. One protestor died.

Ninetysix were very badly injured.

So badly injured were they, in fact, that the whole event spun out of the administration's control. Siddiqui suffered grievous injuries on his spine, face, nose, eyes and ears. When the government hospital couldn't treat him and others similarly injured, they were sent to the KEM Hospital in Mumbai. A letter from the government hospital's medical officer to the Mumbai hospital said, "The government has assured treatment free of charge". The government also announced payments of Rs 10,000 to each of the injured. It also appointed AD Mane, a retired High Court judge, to head a commission of inquiry into the event. Justice Mane's report blasted the police for using excessive force against the protestors who had courted arrest. He suggested that the police be sensitised to human rights. The state government accepted his findings and issued an Action Taken Report, which absolved the protesting outfits of blame.

Yet, the police filed a case against 96 people for their December 6, 1999 protest, and accused them of sedition, rioting, calling an unlawful assembly, assaulting a public servant, endangering public safety, and even "mischief by fire or explosive substance with intent to cause damage to the amount of one hundred rupees".

ALL THOSE injured and given Rs 10,000 as compensation were also implicated. But that is not all. In the nine years since the incident and the alleged crime, no chargesheet has been filed. No charges have been framed. So, the trial hasn't begun. Some 29 accused are on bail. The rest are shown as absconding. "They broke my nose and I lost my sense of smell forever," Siddiqui recalled in an interview with TEHELKA in Aurangabad. He can barely see with his left eye.

Siddiqui was SIMI's all-India general secretary from 1984-92, and had retired at the end of that tenure upon turning 30. Of course, once the police decided that Siddiqui was a SIMI member — even though he had left it in 1992 — there was no stopping them. In March 2001, the second criminal case against him was registered. Following an incident of burning of the Quran in New Delhi, public protests were called in Aurangabad by a federal body of Muslim organisations. Midway, the protest had turned violent, and the police had fired. No one was killed, none injured. SIMI hadn't yet been banned so its office-bearers issued a press release criticising the police for the firing. The police retaliated by filing a case against SIMI alleging it called that protest, and

arrested 10 people including Siddiqui. Once again, the accusations were the same as in the December 1999 case; in addition, they were also accused of hatching a criminal conspiracy. They were let off on bail after three days. Seven years later, the judge is yet to accept the chargesheet and start the trial.

On the day SIMI was banned on September 27, 2001, Siddiqui was picked up from home. "I phoned the police officer to ask why but he said he just wanted to talk with me." When he went there, Siddiqui was arrested and had to spend the night in the lock-up; he got bail the next day. He was accused of inciting people to violence to protest the ban. After six long years, the charges in that case were framed only earlier this summer. "God knows when the trial will begin," Siddiqui says. He is also implicated in the mother of all SIMI cases, the Surat Case, which is detailed in another column.

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

The Case Of The Absconding Lawyer

*Midway through the tribunal, a key SIMI lawyer is suddenly arrested in an old, forgotten case and released as arguments end, Reports **AJIT SAHI***


HUMAM AHMED SIDDIQUI

Home: New Delhi

Date of arrest: June 23, 2008

Charges: Made communal speech at Gorakhpur, 2001

Evidence: Information given to police by unknown persons

Intelligence agents, who claimed to have attended the meeting, were the only prosecution witnesses. That the police registered the FIRs six days after the alleged incident immediately raised doubts that the cases were fabricated. The other four accused secured bail, though by then they had spent two months in jail.

WHEN DELHI lawyer Humam Ahmed Siddiqui saw a break in the hectic schedule of the SIMI tribunal under Justice Geeta Mittal, he headed straight to his father-in-law's home in Gonda in Uttar Pradesh to fetch his children from there. Defending SIMI, Siddiqui had since May attended the tribunal's sittings at Delhi, Bangalore, Hyderabad and Chennai. A veteran of three tribunals and an ex-SIMI officebearer, Siddiqui knew every case past and present, the best defence arguments, and, most importantly for SIMI, the loopholes in the prosecution's case. At 8 am on June 23, 2008, as he stood at the Gonda railway station, the anti-terrorism squad swooped down and arrested him.

Siddiqui's case dates to 2001. Police say that on September 15 that year, he and ex-SIMI president Shahid Badr Falahi made speeches against Hinduism at a madarsa in Gorakhpur city, 800 km east of Delhi. (Falahi was given bail in this case five years ago.) The police had also created another FIR against four local Muslims for attending that meeting. Neither FIR showed how the police got wind of the meeting.

Seven years later, the state government is yet to give a routine sanction to start prosecution against Siddiqui and Falahi. Yet, though virtually dead for seven years, the case suddenly came alive miraculously with Siddiqui's arrest in June. Presenting Siddiqui before the Chief Judicial Magistrate of Gorakhpur on June 23, the police claimed he had admitted to his role in blasts that had rocked Gorakhpur in 2007. Police said they had sent Siddiqui notices and warrants to his father's house in Sultanpur city and then attached his house in a village in the Sultanpur district. But the house they attached is an ancestral property that Siddiqui hasn't visited in a quarter century. As for the court notices, Siddiqui says he never received them at his father's house.

NOT ONLY has Siddiqui been part of the defence team for Shahid Badr Falahi at all the SIMI tribunals, he had deposed before the first tribunal in 2001-02 and was cross-examined by the Home Ministry's lawyer. Siddiqui's name is printed on the reports of the three tribunals. Yet, the Gorakhpur police say he was absconding. His former associate, Supreme Court lawyer Satyanarayan Vashisth, told TEHELKA: "Siddiqui's arrest could be the government's way to cripple the defence at the tribunal."

Siddiqui languished in jail for exactly a month. Gorakhpur lawyer Radheshyam Pandey finally managed bail for him on July 16. In a total mockery of police and jail accountability, Siddiqui could walk out of his cell only a week later, on July 23, because processing the paperwork took that long. By then, the hearings at the SIMI tribunal had already been held at Udaipur, Bhopal, Aurangabad and Mumbai, where the defence was forced to appear without his valuable support. Siddiqui thought better than to rejoin the defence team.

Ever the lawyer, Siddiqui won't talk about the case as it is pending trial. But he denies he confessed to his involvement in the Gorakhpur blasts. He may be free now but his reputation is in shreds, vilified in just a month. The media widely published a news item released by a news agency, which quoted a top Uttar Pradesh police officer as saying that Siddiqui had confessed to "managing funds" of the banned organisation and that he sent money to members in different states. The report claimed Siddiqui was in touch with ex-SIMI general secretary Safdar Nagori, who was arrested in Indore in March this year.

The widely internalised prejudice against SIMI was perhaps revealed most starkly when a Hindi newspaper reporter visited Siddiqui's retired father in Sultanpur while Siddiqui was still in jail in Gorakhpur. In the course of the interview, Siddiqui's father told the reporter that as a government servant he had lived in many cities and named a few. The reporter got stuck on one name: Azamgarh. The newspaper report he wrote suggested that Siddiqui must have got close to ex-SIMI president Falahi, who is an Azamgarh native, when his father was posted there.

"You know something?" Siddiqui says with dismay. "I wasn't even born when my father lived at Azamgarh."

Reported by Anil Varghese from Gorakhpur and New Delhi

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

A Judge Stirs A Hornet's Nest

*Mere opinions, a stunning absence of facts and gross violations of law in the Centre's case against SIMI are what moved tribunal judge Geeta Mittal to reject the ban, Reports **AJIT SAHI***



The Righteous SIMI counsel Jawahar Raja and Mobin Akhtar weigh the evidence
Photo: Shailendra Pandey

SHORTLY AFTER the 9 pm news began rolling out on major television networks on August 5, 2008, “sources” in the Union Home Ministry quietly let out that Delhi High Court judge Geeta Mittal had rejected the Centre’s ban on the Students’ Islamic Movement of India (SIMI) citing insufficient evidence to connect the group with unlawful activities as alleged by the Centre.

Media reports said that the tribunal judge had sent her report in a sealed cover to the Union Home Ministry. Certainly, her order had not been pronounced in an open court. Even the legal team that had contested the ban on behalf of SIMI’s ex-president, Shahid Badr Falahi, had heard of judge Mittal’s decision

— certainly very welcome to them — only from the television networks.

Yet, the next day, on August 6, while the fact of the order having been passed had still not been communicated to either Falahi or his lawyers, Additional Solicitor General (ASG) Gopal Subramaniam appeared before Supreme Court Chief Justice KG Balakrishnan and sought a stay on the order of the tribunal — and got the order he wanted. The Supreme Court immediately stayed the order of the tribunal and ruled that the ban on SIMI will continue for at least three more weeks. The apex court also issued notices to SIMI asking it why the ban against it should not be maintained.

“The Supreme Court’s stay on the tribunal’s order is a murder of justice,” Falahi told TEHELKA (see interview on page 43). Falahi certainly has reason to feel the Supreme Court is being unfair to him on the matter. As per the provisions of the Unlawful Activities (Prevention) Act 1967, under which SIMI was banned, a tribunal headed by a sitting high court judge has to be constituted within 30 days from the day the ban is notified, “for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful”. The law also clearly stipulates that such a tribunal must declare its finding “within a period of six months from the date of the issue of the notification” banning the organisation. (As the last ban was imposed on February 7 this year, Judge Mittal’s report was due no later than August 6.)

SIMI was banned thrice before in 2001, 2003 and 2006. Each time, a new tribunal was constituted. Each tribunal returned its finding in favour of the government, upholding its ban on SIMI. Each time, Falahi appealed before the Supreme Court against the tribunal’s decision. While the Supreme Court showed great alacrity on August 6 in responding to the Centre’s plea to stay Judge Mittal’s order, it hasn’t taken up any of Falahi’s three appeals in all these years. Fundamentally, there should be no difference in the legal status of Falahi’s appeals and that of the Centre’s appeal before the Supreme Court. After all, both were equal parties before the four tribunals. Every time, the party that got an adverse order approached the apex court, but were not granted a hearing.

In any case, the government’s move to seek a stay from the Supreme Court also compromised Falahi’s legal rights in another way.

As per practice, as soon as a party gets an order in its favour from one court, it has the option to file a caveat in the court, to which an appeal would lie, asking that no orders should be passed in the matter on appeal without intimation to it. However, if Falahi wanted to file such a caveat he would be required to clearly set down the date of the order that was given in his favour. But because Falahi hadn't received any official intimation on Judge Mittal's order, he was in no position to even comply with the formalities that the Supreme Court registry would have insisted upon if his caveat was to be entertained.

It is typical of the government's skulduggery that it moved the Supreme Court without communicating the tribunal's order to the contesting party, SIMI, which, in this case, actually won a hard-fought five-month battle against the government at the tribunal. "The appropriate step for the government would have been to at least inform us that an order has been passed in our favour and that it is going to appeal against it before the Supreme Court," a lawyer connected with Falahi's defence told TEHELKA.



Iron Woman: Tribunal judge Geeta Mittal gave a fair ruling

It has also been suggested in the news media — no doubt based on off-the-record suggestions by Union Home Ministry officials and by the government's lawyers — that tribunal judge Mittal threw out the Centre's ban notification on some "technical grounds". Nothing could be further from the truth. This reporter attended the tribunal's hearings across nine cities over three months. The truth is that case after case that the Centre brought before the tribunal was either dubious in its evidence or on procedural issues before the trial court.

INDEED, RIGHT from the step of issuing the notification banning SIMI on February 7 this year, the Centre did not meet a variety of requirements laid down by the 1967 law, as well as the standard procedures of litigation and the principles of natural justice.

The ASG's submissions before the Supreme Court on August 6 while urging for a stay of the tribunal's order are of a piece with the deception that the government has practiced before the tribunal throughout. To begin with, the Central government's notification banning an organisation under the 1967 law must state its opinion and the grounds that led it to the opinion. It is astounding that the notification, while giving out its opinion that SIMI must be banned because of its unlawful activities, set out no ground. During the last days of the hearings at the tribunal, Judge Geeta Mittal had virtually lost her cool with the counsel for the Central government on this issue.

Falahi's counsel Jawahar Raja — a formidable young lawyer who kept his opponents on tenterhooks throughout the three months — demanded that the government set down in writing which part of the notification it considered as the "grounds" that substantiated its opinion that SIMI be banned. Initially, the government submitted in writing that "the last 4 sub paragraphs" of the notification are the grounds upon which SIMI has been declared an unlawful association. However, three months later when Additional Solicitor General KK Pathak, who led the government's charge throughout in the tribunal, submitted a "Synopsis of Reply" arguments on July 30, he wrote: "The first 3 (three) sub paragraphs of the notification dated 7.2.2008 are the grounds".

"It is evident, therefore, that even the Central government is desperately casting about in search of the grounds in the notification, which in fact contains no such grounds," Falahi's lawyer Raja submitted before the tribunal.

Before the Supreme Court, too, Subramaniam's petition continued in the same vein as the notification did, laying down an unsubstantiated statement: "Being a group of students and youth, SIMI is easily influenced by hardcore Muslim terrorist organisations operating from Jammu and Kashmir. The Hizb-ul- Mujahideen and the Lashker-e-Taiba have successfully penetrated into SIMI cadre to achieve their goals." Of course, Subramaniam made no reference to any grounds.

In his petition seeking the stay, Subramaniam referred to the notification, saying it clearly mentioned that if SIMI's unlawful activities were not curbed immediately, it would continue with its "subversive activities" and reorganise its activists, who were still absconding; destroy the secular fabric of the country, polluting the minds of the people by creating communal disharmony; propagate anti-national sentiments and escalate secessionism by supporting militancy.

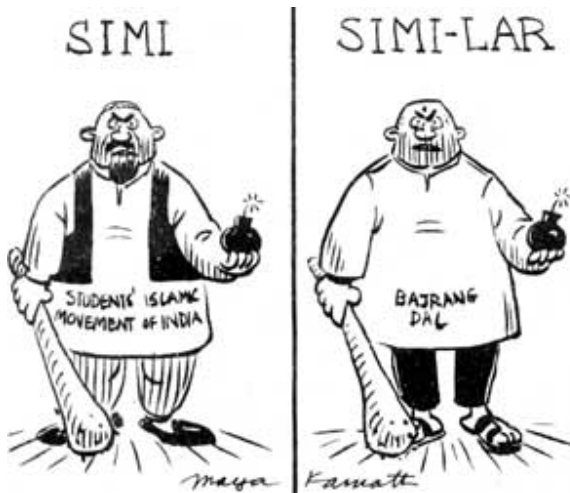
Once again, these are opinions not supported by an empirical grounds. The Supreme Court itself has established that "grounds of the opinion must mean the conclusion of facts on which the opinion is based". But in case after case, as detailed in the personal histories of the various accused chronicled on other pages in this issue, the facts against the accused have turned out to be highly dubious. In fact, scores of the SIMI activists who have been accused of various crimes have been acquitted by lower courts across India. Indeed, an overwhelming majority of the judgements in the criminal cases against SIMI's activists have gone in their favour and against the prosecution. (Read a report on such acquittals in TEHELKA next week.)

Another fundamental principle of natural justice that was severely compromised because of the Central government's approach is

that of the right of the defence to cross-examine the witnesses directly linked with the investigation. Raja, who won the tribunal's order, says, "My client Falahi had strongly questioned the veracity of cases brought against SIMI. The requirements of natural justice would not be served unless the facts that were sought to be proved were deposed to by witnesses from their direct personal knowledge in accordance with the requirements of the Indian Evidence Act."

This means that the Centre should have brought the investigating officers of the various criminal cases against the alleged SIMI accused to depose before the tribunal, so that the SIMI lawyer could get a chance to cross-examine them on the various aspects of the case such as how the arrests and the seizures were made as well as about the confessions of the accused, etc. But an overwhelming number of the witnesses who were brought to the tribunal — nearly all of whom were police officers — were those who hadn't directly led the investigations of the criminal cases, and hence took refuge in saying that they couldn't answer the question put to them because they had no personal knowledge about the crime's investigation, and were only deposing from their study of the documents.

ALSO, THE scheme of the 1967 law is such that an organisation will be banned only for two years at a time. If a fresh ban has to be promulgated after the lapse of the previous one, then it must be based on evidence of new unlawful activity arising after the first ban was notified. In other words, the second ban cannot be based on the basis of the unlawful activity that occurred before the first ban and had formed the grounds for its imposition. Such safeguards were considered necessary at the time the bill for the law was debated in Parliament. After all, the right to associate is a fundamental right guaranteed in the Constitution, and endless bans on an organisation without fresh cause to do so would severely compromise the constitutional right of that association to exist.

**Battle**

Unexamined prejudice, not based on fact, underlies all the animus against SIMI

absurdus

state after state, that is exactly what the Centre did.

Thus, the Centre's decision to ban SIMI on February 7, 2008 should be based on fresh ground arising only after February 7, 2006, when the previous ban was imposed. Despite this requirement, an overwhelming majority of the cases that the Centre brought to this tribunal from the various states pertained to periods as far back as 1999 which have been led in evidence in the previous three tribunals. (In fact, the Centre had so much as admitted before the third tribunal that it didn't have any new cases against SIMI. Yet, the third tribunal had inexplicably upheld the ban notification.) The law also says that the ban notification can be based only on grounds arising before the notification is promulgated. The only valid period here is February 7, 2006 to February 6, 2008. Thus, the Centre could not bring cases arising after February 7, 2008 — like Safdar Nagori's arrest in March this year — before the tribunal. Yet, in

Such was the indefensible weakness in the Centre's case before the tribunal that Judge Geeta Mittal, who throughout the hearings relied extensively on points of law, found that the Centre's ban of SIMI was unsustainable. Kudos must go to the judge for a decision that goes against the prevalent widespread prejudice against SIMI in the government, the police and most certainly in the media. Even if it has promptly been stayed.

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

'The Supreme Court's stay is a murder of justice'

Despite the setback, SIMI's ex-president Dr. Shahid Badr Falahi is confident the body will be legitimate again, Reports **AJIT SAHI**



Dr. Shahid Badr Falahi

What is your reaction to the lifting of the ban on SIMI?

Our case has always been strong. The government used to create an external situation that put pressure to get a favourable verdict. When the first tribunal was about to give its report in 2002, Godhra happened and SIMI was named. Obviously, the tribunal was influenced. When the second tribunal was to give its report, Mulund and Ghatkopar blasts took place, then again SIMI was named without any proof. And when the third tribunal was to give its report, Mumbai train blasts of July 11, 2006, happened, and the verdict went against us. Though if you read that tribunal's report you will wonder why the judge didn't apply his mind. But this time, the government's manipulations fell flat. Earlier verdicts, too, would have favoured us had the circumstances been different. This verdict absolutely matches our expectations. The case against us was a castle of sand and we knew it would be blown away. We are happy.

Why do you say the third tribunal's judge didn't apply his mind in giving his verdict in 2006?

If you read the judgement you will see that the foundation of the judgement is that all the things that have come into the picture are false but it seems that Shahid Badr is not telling the truth. The word the judge has used is 'evasive'. He said he 'felt' that I wasn't telling the truth. So the judgement was made on the basis of 'feelings' and not evidence.

What do you have to say about the Supreme Court's stay on the judgement?

The stay from the Supreme Court is a murder of justice. Three previous tribunals ruled against us and we appealed against those orders, but the Supreme Court didn't hear us. But now the Supreme Court intervened immediately. If it had been so prompt with our petitions, then our previous bans would have been thrown out long ago. But we have not lost hope even after seven years of being banned. And now we have already got the notice of lifting of ban for a few hours and even this time we won't lose hope.

Why is it that SIMI has been constantly accused of being unlawful and seditious, be it the BJP-led government or the Congress-led? There must be some reason?

We have faced not one but a thousand allegations. But we never backed out in the legal proceedings and demolished every argument and evidence against us to prove that we are not guilty. If anyone takes out the time to come to us and read all the documents with the allegations against us and our responses to it, he will wonder how on earth the castles of sand became so strong. We are not afraid of any accusations. They thought that if this group of Muslims which is young and educated can be crushed then the entire community will be weakened. RSS and its sympathisers are present in all other parties and they have always opposed us. But we are not afraid of them.

Why do you think the Centre is adamant to keep SIMI banned?

The BJP-led government had taken advantage of the September 11, 2001 terror attacks on the US and banned us in order to raise their position with the US. Now, everybody is trying to show their loyalty to the US.

It is said that SIMI's ideology does not believe in the Indian Constitution, that it is pan-Islamic, that it rejects India's nationalism.

These are only allegations. We have given our detailed written explanations to the courts. Please read them if you can. I believe that in a land where everybody is allowed to follow his religion and principles and popularise those ideals, we also want that all those who live on this planet should live like Allah's people, and live their lives as per the teachings of Allah and Prophet Mohammad.

This is our desire. But we do not use any force for this, because Allah Himself has rejected force. But is it wrong to make one's ideologies public and propagate it in a decent manner? No.

But SIMI is accused of being a terrorist group. It is said it has links with Lashkar-e-Tayaba, Jaish-e-Mohammed, Al Qaeda and Osama Bin Laden...

[Laughs] These are false accusations against us and even though we have proved our innocence time and again, it is disappointing that they keep being repeated. Basically, because of the successive bans on us we are blamed for everything. We have never been associated with any terror group. We believe only in reaching our ideologies, thoughts and messages to the people. We have opposed violence right from the start.

Quoting intelligence agencies, the media has said SIMI has broken into two factions: yours and Safdar Nagori's. I, too, have read this in the media. Had the ban been lifted for some days I would have called them and asked about it. Right now there is a ban on travelling or phoning or meeting anyone. Anyway, whatever is being published in the newspapers is being done at the behest of those who want to prejudice the public mind against us.

What is your stand on the bomb blasts by terror groups?

We have always maintained that murder of even one innocent person is the murder of entire humanity. We also opposed it when we were functional and not banned. Once I had held a press conference in Delhi after the bomb blasts in Mumbai, denouncing the terror acts. We opposed it and offered sympathies to the relatives of the victims. But that was used against us. It was said that despite being banned we hold press conferences and release statements. Even the judge said that.

Do you think SIMI can make a contribution in maintaining communal harmony in the country, to ensure there is no divisiveness, and that India moves forward?

A great man like Gandhiji was killed by Nathuram Godse. Godse was a terrorist. Working on the same ideology, RSS has always

played a key role in disturbing the communal harmony. In spite of that RSS is not banned. We believe that to maintain brotherhood and harmony in India, RSS should be banned. BJP, RSS are people of the same family, they should be sent to jail. How do you expect peace and harmony without sending them to jail? Think about it. Modi is a big terrorist.



Saif Nachan, Dr. Shahid Badr, Khalid Azmi: Delhi High Court

Arun Jaitley, Advani, Vajpayee are all terrorists. The entire State, the entire country is terrorised by their activities. But in every way they get respect. When you allow terrorists to sit on your head, how can you still hope to live in peace? They kill people for their personal benefits, for their chair, for their party. On the other hand, people like us, who are weak and subjugated, who run a character-based organisation that hones ethics and morality in young men so that they don't ask for dowry, don't smoke, don't abuse, stay away from films and merriment and fashion, are thrown into jails. And the killers of humanity roam freely.

There are 80 crore Hindus in India. What does SIMI think of them? This is a very good question. Allah has set some rules for his kingdom. They say that you should call the people on the earth towards the religion of god with service, advice, in a decent way, with politeness, with logic. All of us are sons and daughters of Adam and Eve. We love all human beings and want to save them all from the fires of hell. We want them to live in a just world and, after death, live peacefully in heaven.

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

Terror Has Two Faces

A shadowy, pan-Islamic seditious organisation or merely a conservative Islamist and politically conscious student group? Read and draw your own conclusions on SIMI, Reports **AJIT SAHI**



Assertions SIMI members stamp on an American flag to protest US action in Iraq
Photo: Reuters

THERE ARE two versions of what SIMI is. One is SIMI's own, the other is that of the rest of the world. For all purposes, the rest of the world has been led by the Indian government for the last seven years since SIMI was first banned on September 27, 2001. The government's averments about SIMI are said to be based on supposed intelligence from its secret agencies and the police across India. There are, of course, scholarly Internet sites holding forth on the organisation. But it is clear on their first reading that their text is dictated by none other than the intelligence agencies.

Sadly, it may perhaps never be known for sure what SIMI's character and activities before the ban was — or what it has been since, for that matter. The reason is that the two versions, SIMI's

and the government's, stand at absolutely opposite ends of the spectrum. The government's version is suspect for the obvious reason that it is propagandistic; besides, there isn't any way to crosscheck it. The government had seven years to bring proof of its claims about SIMI, but it hasn't yet done so and it appears doubtful it will bring some dramatic proof anytime soon.

As for the SIMI version, its truth or lie could perhaps have been nailed by investigating documents and other material in its dozen-odd offices across the country that were sealed at the time of the 2001 ban. But now, it is impossible to know if the insides of these offices have been maintained exactly as they were then. SIMI's last president, Shahid Badr Falahi, thinks that opportunity is gone. "I passed by my former office after leaving jail four years ago," Falahi told TEHELKA, referring to SIMI's national headquarters in Delhi's Muslim neighbourhood of Zakir Nagar. "I was dismayed to find it was missing doors and had turned into a den of gamblers."

So the only way to sift the SIMI fictions from the facts is to juxtapose the two versions. This reporter leaves it to the reader to decide which version she finds credible.

The very first page of the background note issued with the Centre's notification banning SIMI in February this year had this to say about the controversial outfit: "The stated objectives of the organisation (SIMI) are a) Governing of human life on the basis of Quran, b) Propagation of Islam, c) 'Jihad' for the cause of Islam, d) Destruction of Nationalism and establishment of Islamic Rule or Caliphate..."

The government says SIMI is a widely spread organisation with Muslims of all ages and persuasions as its members, who are underground and active across India. It says SIMI is linked with international terror groups; that it trains itself in arms, raises national and international funds from the Gulf and other Muslim countries, hatches conspiracies and carries out bomb blasts. Says the background note: "[SIMI] does not believe in the nation state, as well as in the Constitution, or the secular order; it regards idol worship as a sin and its holy duty to end it... SIMI aims to replace [Indian nationalism] with an International Islamic Order."

SIMI says the government is right in saying it believes that human life should be governed on the basis of the Quran and that it wants to propagate Islam. (Its ex-leaders don't say so openly, but certainly as Islamists they entertained notional ideas of an overarching Islamic order across nations and lands.) But SIMI's ex-leaders deny every other claim of the government, especially

that they are terrorists and want to break up India. According to them, theirs was a pious organisation that wanted to instil the best Islamic values in students. It was a fusion of purist Islamic religious values gained in madarsas as a guiding principle of life, with the secular learning of engineering, medicine and accounting.

BUT, AGAIN, no accurate background can be wrenched even from SIMI's recent leaders on the group's core activities of 30 years ago when it had barely launched, or in the years immediately after. Such is the ferocity of State persecution of SIMI that everyone, save a few, ever connected with SIMI are loath to articulate their experiences and highlight the organisation's changing character over the years.

What is true though is that SIMI has in a sense contextualised for the Indian Muslims the key milestones in the history of independent India as they see it. Ask an Indian Muslim his list of key events since 1947 and chances are that the destruction of Ayodhya's Babri Masjid by Hindu zealots in December 1992 would rank among the top three. The grisly killings of about 2,000 Muslims in Gujarat in February- March 2002 would certainly be another. The Shah Bano judgement would be the third.

The sizzle of a booming economy has seen India's middle classes enjoying their new riches shrug off these epochal events and move ahead. For them, Babri Masjid is a relic and a nonissue, politically and socially. Not so for SIMI and its thousands of adherents across India. Says Yasin Patel, a SIMI member from 1985-97: "The demolition of the Babri Masjid was the murder of democracy. SIMI took notice of it."

Conversations with a cross-section of Muslims across some nine cities give the impression that SIMI's biggest attraction was that it organised a voice for those Muslims who felt disheartened at being at the receiving end of decades of communal violence, and at the lack of political and economic opportunities for the Muslim community. Most importantly, SIMI rejected the pervasion of hopelessness and defensiveness among Muslims and said Muslims must fight for their rights within the framework of Quranic teachings. This certainly explains the group's increasing pull among the Muslim youth.

"SIMI gave scholarships to bright and needy students," said Abdul Razik of Kottayam, Kerala, a former SIMI activist. SIMI also launched 'summer camps' for middle class Muslim children studying in 'secular' schools so they could be given crash courses in Islamic teachings. Every day a new topic from the Quran was discussed. The 12-day workshop also had quizzes around holy teachings. SIMI also involved itself in relief work, such as in Gujarat when the earthquake struck the Kutch region on January 26, 2002.

With so many college students under its wings, it was natural that SIMI would take to publishing on current events in a major way. For years before it was banned, SIMI ran weeklies in Hindi, Urdu, English, Malayalam and Tamil among other languages across India. It had fulltime editorial staff from among its members, who daily scanned the mainstream media and picked up content from them. Such content, as well as original content in SIMI publications, were always highly political — and analysed in the overall context of the Quran. It was constantly pushing the envelope, such as demanding a plebiscite be held in Jammu and Kashmir to determine what Muslims want in that state.

One feature of SIMI was organising large conferences. SIMI's ex-leaders are eager to point out that these were secular events, at least until 1992. Razik recalls that more than 700 people had attended one of its seminars, including several non-Muslims, one of them a professor of history at a nearby town college. In the early '90s SIMI called a seminar on "Communism and Islam" at the Aligarh Muslim University. "We called people from both sides," says Patel. Once in Ahmedabad, VHP demanded a ban on lamb slaughter when the Muslim festival of Bakr-Id and Mahavir Jayanti

fell on the same day. SIMI called a symposium “Hindu Dharma and Non- Vegetarianism” and invited members of the Jain community. (The police had filed FIRs against the organisers.) When the Jamaat-e-Islami was banned after the demolition of the Babri Masjid in 1992, SIMI called a conference to protest it. In 1994, SIMI called a Muslim-Dalit conference against the caste system in Hinduism. SIMI’s leaders would travel regularly to smaller towns and cities and hold public meetings and discuss local issues of the Muslims concerning everyday living. As a bonus, they would explain key national and global events affecting Muslims.

On an ordinary day, SIMI activists would get together, pick a page of the Quran, and discuss its significance among them. At the time of the ban, SIMI was spread across 16 zones in Uttar Pradesh, Maharashtra, Kerala, Tamil Nadu, Madhya Pradesh, Gujarat, Rajasthan and Andhra Pradesh, among others. Each zone was further subdivided into sub-zones, units and ‘circles’. The pyramid structure worked well and had its own version of democracy. The bottom rung elected a leader from among itself through consensus. The member who was the subject of discussion would politely leave the room, so others could talk freely about him. Leaders so elected would meet and similarly elect leaders for one level up, and so forth. A member retired from SIMI after turning 30. Leaders were elected for a maximum of a two-year term. The president would appoint other office-bearers.

SIMI ex-leaders say they never took international money. Contributions were turned down from members if they migrated overseas. Ordinary members weren’t paid anything, but officebearers received meagre stipends — Falahi’s at the time of the ban was Rs 3,000 a month.

Surprisingly, almost everyone TEHELKA spoke with stressed that free speech was not only tolerated internally in SIMI but vigorously championed and zealously guarded by the members, lest the outfit turn autocratic.

“What distinguished SIMI from other Muslim organisations was that while the others had a limited vision, SIMI traversed the whole universe of local, national and international issues,” ex-SIMI activist Muqeemuddin Yasir told TEHELKA in Hyderabad, his face aglow with obvious pride. “It never failed to oppose the oppression of Muslims.” A month after the interview, Yasir was arrested by the Hyderabad police. Arrests and more arrests, that’s about all that’s been happening with SIMI over the last seven years.

From Tehelka Magazine, Vol 5, Issue 32, Dated Aug 16, 2008

BRIEF HISTORY OF SIMI (1977 – 2008)

THE FOUNDING

SIMI was founded in Aligarh on April 25, 1977 as an organisation run exclusively by member students. Its uniqueness lay in the fact that here were college students and not just madarsa alumni who had come together to follow the path set by the Quran and Prophet Mohammad and evangelise. The first presidents were Ph.Ds. One was a doctor. Although SIMI was affiliated with the umbrella Muslim group, the Jamaate- Islami Hind, it fiercely maintained its autonomy and independence. Over time, it gained prominence as it attracted students.

RADICALISATION

SIMI first came to national attention in 1984 with a conference it organised in New Delhi to debate the challenges before India's Muslims. About 10,000 students reportedly participated in it. With a young leadership at the fore, fiery speeches were inevitable. The media took note — so did the police and intelligence agencies. Subsequently, the group began reacting to political issues as well as pan-Islamic ones. In 1985, it led protests against the Supreme Court verdict in the Shah Bano case. The demolition of the Babri Masjid in 1992 radically transformed the public posturing of SIMI. By now, the Jamaat had grown too uncomfortable with SIMI and the two parted.

TERROR PROFILE

The first criminal cases against SIMI began to surface 1998 onwards. With the BJP-led NDA in power at the Centre and the BJP ruling Uttar Pradesh, a war of words began between the Muslim students' body and the Hindu organisations such as the VHP and the Bajrang Dal. Security agencies began building a case against SIMI. By 2000, the Union Home Ministry had begun to say that SIMI was under its scanner for possible connections with Pakistani terror groups.

AN OUTLAW

In the wake of the terror attacks in the United States, the Indian government banned SIMI on September 27, 2001, under the Unlawful Activities (Prevention) Act 1967, for two years. The ban was renewed thrice. Each time, a tribunal constituted by the Centre upheld the ban after elaborate proceedings. But the fourth ban promulgated on February 8 this year was rejected by a tribunal headed by Delhi High Court judge Geeta Mittal on August 6. The next day, however, Supreme Court Chief Justice KG Balakrishnan stayed the tribunal's order.